OCTOBER 1902

MEDICO-LEGAL BULLETIN.

Vol. I No. 1

SPECIAL ARTICLES

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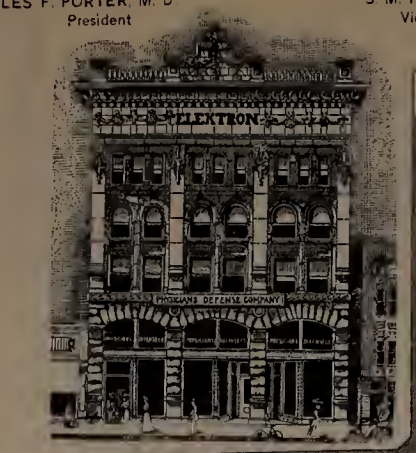

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FORT WAYNE, IND. Dec. 30, 1903.

J. W. Farlow, M. D.,
234 Clarendon St.,
Boston, Mass.

Dear Sir:

Your esteemed favor of Dec. 24th addressed to our Mr. Chas. E. Clarke, of your city, requesting that a set of the Medico-Legal Bulletin be mailed to the Boston Medical Library, has been referred to this office for reply.

We have this day forwarded to the Library copies of all the back numbers of the Bulletin from October, 1902 up to and including December 1903, and have placed the Library on our mailing list and in future it will be remembered with every issue.

Thanking you for your suggestion, and interest in our Organization, we remain,

Yours very respectfully,

PHYSICIANS DEFENSE COMPANY,

E. [illegible]
Secretary.

Dic. A.

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CHAS E. CLARKE, Special Agent. 10 Chandler St.

BOSTON, MASS

Dec 24th 1903

Dr. John M. Farlow.

Dear Sir.

Yours received in regard to the Medico Legal Bulletin. I think Your suggestion a good one. and have requested the Company to forward all numbers up to date to the Medical Library No. 8 The Fenway.

Truly Yours

Chas. E. Clarke

7634

Medico-Legal Bulletin.

BOSTON MEDICAL LIBRARY JAN 4 1906

ORIGINAL ARTICLES

Physician's Liability for Extended Operation Without Consent.

BY E. M. HULSE.

A surgeon is liable at any time in carrying on an operation for the removal of diseased parts of the body to find during the operation a more serious state of affairs than the symptoms disclosed, and it is of importance to him to know whether or no he will incur any liability in proceeding further without the consent of the patient. In many cases the life of the patient is at stake, and to obtain his consent to the additional operation it would, of course, be necessary to restore him to consciousness. The patient is in no condition to give his consent to anything for some considerable time after the administration of the anæsthetic has ceased, and this lapse of time may be fatal; while if the surgeon had gone on and completed all that he found necessary to be done the life would probably have been saved. The surgeon owes a duty to every patient to use skill, and care and diligence in the treatment of him. If in his best judgment, based on the use of ordinary skill, an extended operation is necessary to save the life of the patient, is he not fulfilling his duty when he completes the entire operation then and there? When a surgeon is employed to perform an operation he has the consent of the patient to do whatever the particular operation requires for its successful performance. If the employment was general and the surgeon was given authority to do whatever he found necessary to be done to bring about a cure, there can then be no question, of course, as to the right of the surgeon to perform additional operations. But if the employment is special and confined to a particular operation he may or may not be exceeding his rights under the contract, when on discovering that a further operation is necessary, he proceeds without restoring the patient to consciousness to get his consent.

No court of last resort has spoken on this point and a decision is awaited with interest. Several inferior courts have had the question up before them but it has not been definitely settled by any of them. In Russia a surgeon was imprisoned by the court at Moscow for performing an operation without the consent of the patient, and on appeal the sentence was confirmed. This

was a case involving the consent of the patient to the operation in the first instance, and, if there was no consent to it, there was, of course, no right to perform it.

In Canada, in a case in the Superior Court at Montreal, a surgeon removed the toes and a portion of the left foot of a patient, which had been mashed by a locomotive, and some days later the whole foot was removed. The plaintiff claimed he had given his consent to the first amputation but not to the second. It was held that the surgeon had exceeded his right, in removing the whole foot without the consent of the patient and was responsible for any injury which resulted therefrom. In this case the second operation was not performed for several days after the first, and its necessity was not apparent during the performance of the first operation. The second operation was therefore an entirely new and independent undertaking and the consent of the patient thereto is as essential, as it was before the first operation.

In the recent case of *Ware vs. Post Graduate School and Hospital, Dr. Franklin H. Martin*, and others, we have involved the points in question. In this case Dr. Martin diagnosed a ventral hernia in the plaintiff and began an operation for its reduction. During the operation he discovered an extensive tubercular condition involving the ovaries, which the symptoms had not disclosed when he made his diagnosis. He determined at once that in order to save the plaintiff's life it was necessary to remove the ovaries, and proceeded to do so without restoring her to consciousness to get her consent. She recovered and later showed her appreciation of what had been done by bringing her action of *trespass vi et armis* against the defendants for removing these organs without her consent. The defendants filed the general issue of not guilty and a plea of justification that the removal of the ovaries was necessary in order to save the life of plaintiff. The case went to trial before Judge Brentano of the Superior Court at Chicago. The plaintiff was unable to prove that the additional operation had been performed and on motion of the defendants the court directed a verdict for defendants, but the next day granted a rehearing on a technicality. The rehearing was had before Judge Kavanagh of the same court, and to prove her case one of the defendants was supœnaed. During the course of the introduction of plaintiff's testimony she inadvertently brought out that the additional operation was necessary, thus proving the plea of justification of the defendants. At the close of plaintiff's testimony defendants asked for an instruction of not guilty because their plea had been proven. The court granted the motion and instructed the jury as requested.

The plea in this case put in issue the necessity of the additional operation, and placed the burden of proving it upon the defendants. The plaintiff proved it for them and the court allowed the plea to stand. Nothing was said of course by the court in giving his instructions as to the right of the surgeon to perform any additional operation which he found necessary, but it can be said that the court accepted the plea as proved as sufficient to relieve the defendants from liability. An appeal was prayed and granted

and it is to be hoped that the case will be carried up and reviewed on writ of error in granting the motion and giving the instruction asked by defendants, so that the question may be finally settled. In this case there is no express statement which can be quoted or cited as an authority that the consent of the patient will be implied from the necessity of an additional operation, but it is seen that that inference can be drawn from the peculiar turn the case took, leading up to the instruction given by Judge Kavanagh. A case is never of weight in which the point decided is left to be inferred from the facts and statements of the court; but a rule can be drawn from the facts of this case which seems to be reasonable and just and one which will certainly work the most good to the members of the profession and to their patients, such as the following:

If a surgeon is employed to perform an operation for a particular trouble, during the performance of which he discovers a more serious condition than the symptoms disclosed and he proceeds to operate further without restoring the patient to consciousness to get his consent, he will not incur any responsibility for such extension provided it was necessary to be performed in order to save the life of the patient, and he uses good judgment, ordinary skill, care and diligence in coming to that conclusion and in carrying out the operation.

The essence of this rule is the necessity of the operation as it appears to the surgeon in each particular case. It will be incumbent upon the surgeon to show the necessity in order to relieve himself of any responsibility and it will also act as a safeguard to the patient, for in each operation a surgeon's professional reputation is at stake and a surgeon who has any standing at all in the community will not risk an experiment nor perform an unnecessary operation when a life is in danger. It will also enable the surgeon to fulfill his obligation to the public in those cases where his utmost skill is required to save a life. It cannot therefore but work the most good to all.

When we consider the right of a surgeon to extend an operation not of vital importance to the life of the patient but one which the surgeon, in his best judgment considers should be performed in order to secure for his patient the cure or relief desired and to render to him his best professional skill, we find no authority or rule governing the case. It is still an open question, and it must be left to our courts to decide what the rule shall be. In such a case the necessity of an extended operation is not so urgent or great as it is when a life is at stake, but the same degree of skill and care is required in both cases, and it seems the same opportunity should be given the surgeon to exercise it, in the one as in the other.

A special contract in each case giving the surgeon the right to do all that it is necessary to do to produce a cure is, of course, one means of overcoming this difficulty, but it is often times impossible to make such an agreement, and should it be made verbally it may be impossible to prove it. The law should afford some protection to the profession in such a matter as this, and it would seem that the necessity of the additional operation being left to the best judgment of the surgeon in each case will give this protection both to him and to his patient.

An expression of opinion from an appellate court is awaited with interest.

Physician Not Legally Bound to Accept Case Although Liable for Abandoning Patient.

The erroneous impression prevails quite extensively through the country, that because a physician, under the law, would be liable for damages resulting from his abandonment of a patient, that he is legally obligated, under all circumstances, to attend the sick when called upon, and a few cases of this character have been taken into court.

The laity are prone to infer that the duties of a physician are analogous to those of common carriers, inn-keepers and the like. A precedent has been established in favor of the profession by the decision of the Supreme Court of Indiana, in Hurly vs. Eddingfield, handed down in April, 1901. A brief history of the case is as follows:

Dr. Eddingfield was called by Hurly to attend his wife in childbirth, but refused to go. It is reported that Hurly left the doctor's office, but returned again within the hour and tendering the fee, again requested the doctor to attend his wife. The doctor refused a second time, whereupon the plaintiff left, but did not secure the services of another physician. Shortly after the baby was born the mother died, and suit was instigated by the plaintiff against the doctor for $10,000 damages. It was tried in the lower court, and although as a rule, in cases of this character the sympathies of the jury are not with the physician, a verdict was rendered for the defendant. The case was appealed to the Supreme Court where the verdict was affirmed.

In handing down the decision the court calls attention to the fact that the laws granting permission to practice medicine are preventive and not compulsive measures; in other words that the license granted to the practitioner does not require that he practice on any other terms than those he may choose to accept, and if he so wills he need not practice at all. As the physician had not in this case entered into a contract for services, he could not be held liable to respond to this call. Had a contract been entered into between the plaintiff and the defendant, by the defendant agreeing to attend to the plaintiff's wife, and had then refused to render the services, he would have been held liable for abandonment. A case of this character was decided in the Supreme Court of California in February, 1901. The record showed that the defendant (the doctor), was employed to attend plaintiff during her first confinement. He accepted the case visiting the plaintiff at different times, up to the date when he deemed it proper to employ instruments to aid in the delivery of the child. The defendant was compelled by the plaintiff, although he tried several times to use the instruments, to desist and let go of the instruments. After the defendant had made several attempts and had threatened to quit the case, he abruptly left the house. It was an hour or two before another physician was obtained, who delivered the plaintiff by the use of instruments.

An action for damages was brought against the physician and a verdict of $2,000 rendered. The case was appealed to the Supreme Court which

held that "it is the undoubted law that a physician may elect whether or not he will give his services to the case, but, having accepted his employment and entered upon the discharge of his duties, he is bound to devote to the patient his best skill and attention, and to abandon the case only under one or two conditions: First—where the contract is terminated by the employer, which termination may be made immediate; second—where it is terminated by the physician, which can only be done after due notice and an ample opportunity afforded to secure the presence of other medical attendance." The court held that although "it did not appear that the defendant's treatment of the case, up to the time of his abandonment of it, was either negligent or unskillful, and that all suffering was caused by the patient," yet the dominant question at issue, was the abandonment of the case. This having been proven and $2,000 not being excessive the verdict of lower court was sustained.

A Promise to Pay for Physician's Services by Third Party Not Enforceable by Law Without Written Contract.

Physicians and surgeons are frequently called by a third party to attend a sick or injured person and the question often arises as to whom he shall look for his compensation. The third party may be a responsible party, while the patient may be worthless, and the fact that the third party called the doctor may have induced him to answer the call and treat the patient. Whether or no the third party acted as the employer or as agent only of the patient will depend, of course, upon the circumstances of each case—what was said by the third party at the time the transaction took place or during the treatment of the patient. This is particularly so in cases of injury to employes of corporations. The employer very frequently calls in a physician to look after an injured employee, but in the absence of any definite understanding between the corporation and the doctor no liability should be incurred by the corporation by the mere calling of him to attend the employee. Some one must call him if the employee cannot, and if the corporation recognizes the necessity and calls the physician, it ought not to be held responsible for the services. The physician and surgeon is then left to look to the patient for his fees, unless he contracts with the corporation to perform the services. In such a case, however, the physician will want to make an express contract with the company that he is to perform the services and look to it for his compensation.

A physician is liable to render what may amount to gratuitous services at any time to irresponsible men unless he can make some such specific contract with a responsible third party as that just referred to. An individual may promise to be responsible for the expense of the treatment of a certain patient, and it then becomes important for the physician to know what the agreement is and how far he is protected by it, and whether

or not it should be in writing. Many times the wording of the agreement will prevent a recovery, while if the physician had been a little more careful there would have been no trouble.

The Statute of Frauds, which is an English statute and has been adopted in part in almost every State in the Union, provides among other things "that no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized." This means that unless an agreement to pay the debt of another is put in writing and signed by the party who is to pay the debt or his authorized agent, said party is not bound to pay the debt should he be called upon. It is then of importance to know whether or not the promise by the third person, if it is not put in writing, is within the statute so that it can be enforced. The language used in the verbal promise is controlling. If a patient should come into a physician's office accompanied by a third party, and ask for treatment, and the third party to gain him credit should promise the physician, "If he does not pay you, I will," this is a collateral understanding and void without writing by the statute. Should he say, "Give him the treatment, I will be your paymaster," or "I will see you paid," this is an undertaking as for himself and he will be to all intents and purposes the patient, and no contract in writing is necessary. The promise must be collateral to the transaction to make a written memorandum thereof necessary and if the promisor makes himself primarily liable by his promise it is not within the statute and need not be in writing. This question of what is and what is not within the statute is, owing to its dependency on the facts in each particular case, one of much uncertainty, and one on which there is a great variety of decisions. One court has held the same expression not to be within the statute. This is true as to the expression quoted above, "I will see you paid," which has been held by the Supreme Court of Michigan to be an undertaking by the promisor and not within the statute, while the Supreme Court of Nebraska has held that the same undertaking is collateral to the employment and is therefore within the statute. Various other illustrations are to be found in the books, which all go to show how uncertain it is to leave it to the courts to decide whether or not the contract should have been in writing.

There, of course, must be a consideration before any such agreement between a physician and a third party can have any effect, but this consideration need not be stated in the agreement. It is left to be shown when the contract is sought to be proven.

Summing the whole matter up, a physician, who desires to hold a third party responsible for his fees for services which he performs for another party, must put the promise in writing and have it signed by the third party and not run the risk of a court deciding that a verbal undertaking by the party is within the statute and prevent a recovery of his fees, because the promise is not in writing.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

"Good Standing," Illinois State Board of Health.

On July 8, 1902, the Illinois Board of Health adopted the following schedule or minimum requirements for medical colleges to be determined in "good standing," which is to go into effect January 1, 1903:

CONDITIONS OF RECOGNITION OF MEDICAL COLLEGES.

RULE 1. Only regularly conducted and legally chartered medical colleges which conform to the conditions of admission to lecture courses, the course and period of study, the number, character and length of lecture terms, the duration of attendence on hospital and clinical instruction, as set forth in the Schedule of Minimum Requirements adopted by the Illinois State Board of Health, and the other requirements of a medical education which obtain as the practice of a majority of the established medical colleges in the United States, shall be considered medical institutions in "good standing" according to the purpose of the Act to Regulate the Practice of Medicine in the State of Illinois, approved April 24, 1899.

RULE 2. No medical college can be held to be in "good standing" until it has established its claim to such standing by an active existence of not less than four years, and then only on compliance with the terms of Rule 1. *Provided*, that colleges which after a personal investigation made by a Committee of the Illinois State Board of Health, are shown to comply with the Schedule of Minimum Requirements and to possess a sufficient and competent corps of instructors, and the necessary facilities for teaching, may, at the discretion of the Board, be granted full recognition during the first year of existence.

RULE 3. All medical colleges in "good standing" with the Illinois State Board of Health will be required to publish in their annual announcements or catalogues a complete list of all matriculates and a separate list of all graduates of the session or year immediately preceding.

RULE 4. No medical college will be considered in "good standing" with the Illinois State Board of Health which publishes in its annual announce-

ment or catalogue, or otherwise, any misrepresentations regarding the curriculum of the college or the facilites for instruction, or the number of students matriculated or graduated.

CONDITIONS OF ADMISSION TO LECTURE COURSES.

1st. Creditable certificates of good moral character signed by two physicians of good standing in the State in which the applicant last resided.

2nd. As evidence of preliminary education, as a *minimum* requirement, a diploma or certificate of graduation from a high school; or a certificate signed by a principal of a regularly organized high school or by the examiner of the faculty of a recognized literary or scientific college or university, or by the State Superintendent of Public Instruction, or a Superintendent of Public Schools, of having successfully passed an examination in all the several branches embraced in the curriculum of a four years' high school course. The *matriculation examination shall not be conducted by any member of the faculty of the medical college.*

The Illinois State Board of Health will require each applicant for a State certificate to present documentary evidence of his preliminary education together with his medical diploma, when taking the examination of the Board.

The conditions above set forth will govern in the case of all persons admitted to the Freshmen Year of a medical college in "good standing," on or after January 1, 1903.

ADVANCED STANDING.

Applicants holding the degree of A. B. or B. S. or an equivalent degree from a regularly established college of Arts or Science, which requires an attendance of three or more years as an essential to graduation, may be given credit for work done in the branches of the medical curriculum of the first year and may be advanced to the Sophomore Year of a four years' medical course, on condition that they comply with the entrance requirements of this Board and that they subsequently complete the work of the Freshman Year if not already completed, and that the work already taken shall *not* be below the standard required by this Board.

The same advanced standing may be allowed on the same conditions to applicants presenting a degree from a recognized College of Dentistry or College of Veterinary Medicine, or documentary evidence of having completed in a reputable University of College of Arts or Science, the major part of the work usually embraced in the curriculum of the freshman course of a recognized medical school.

No such advanced standing shall be allowed until after the applicant shall have either graduated as indicated or performed the work specified above, and not until three months after the completion of said work.

The above requirements for advanced standing will govern in the case of all persons admitted to the Sophomore Year of a medical college on or after January 1, 1903, and may be made operative prior to that time.

Graduates of medical colleges recognized at any time by the Illinois

State Board of Health, may be admitted to any class without examination. Students of said colleges who possess certificates of attendance and of successful examinations, can enter without examination the term immediately following that previously attended. The student shall be required to pass an examination in all branches in which he has been found deficient. Students who have attended one or more full terms in colleges not fully recognized by this Board may be granted advanced standing in accordance with such attendance, on complying with the entrance requirements set forth in the Conditions of Admission to Lecture Courses, and passing all examinations and performing all laboratory work of the classes below that which they enter, providing that the work already done conforms to the requirements of this Board.

Graduates or students of colleges to which no recognition is given by the Illinois State Board of Health can be granted no advanced standing whatever.

LENGTH, NUMBER, AND CHARACTER OF COURSES OF LECTURES.

The college shall have a four years' course of instruction consisting of four terms, extending over a period of four calendar years, and the minimum time between the commencement of the work of the Freshman Year and the ending of the work of the Senior Year, on which all students are required to be in attendance, shall be not less than forty months. No two terms begun on or after January 1, 1903, shall commence and end within any consecutive sixteen months.

The time occupied in each regular term begun on or after January 1, 1902, shall be not less than seven months or thirty weeks, and each such term shall consist of not less than eight hundred hours of work.

The branches of medicine to be included in the course of instruction shall be at least as follows: (1) Anatomy; (2) Physiology; (3) Chemistry; (4) Materia Medica and Therapeutics; (5) Theory and Practice of Medicine, including Opthalmology, Otology, Dermatology and Neurology; (6) Pathology and Bacteriology; (7) Surgery, including Orthopedic Surgery; (8) Obstetrics; (9) Gynecology; (10) Hygiene; (11) Medical Jurisprudence, (Forensic Medicine).

ATTENDANCE.

1. Regular attendance during the entire lecture courses shall be required, allowance being made only for absences occasioned by the sickness of the student or his immediate family, such absence not to exceed 20 per centum of the course.

DISSECTIONS, CLINICS AND HOSPITAL ATTENDANCE.

1. Each student must have dissected at least the lateral half of a human cadaver.

2. He shall have received clinical and hospital instruction throughout at least two annual terms.

INSTRUCTION.

The college must have a sufficient and competent corps of instructors,

and facilities for teaching, dissections, ambulatory and hospital clinics such as obtain in the majority of medical colleges in the United States.

GRADUATION.

No student shall be graduated by any medical college in "good standing" with the Illinois State Board of Health who has not completed four full terms of lectures as prescribed by the rules of the said Board (certain persons to whom advanced standing is allowed excepted) and has complied with the requirements of the said college, as set forth in the published announcement of the college, and has completed in the college by which his diploma is granted, a continuous course of lectures in the Senior Year of at least seven months in duration.

Medical Practice Act Sustained.

The attorney for the district has sent the following reply to a physician of Virginia who desired to practice medicine in the District of Columbia without taking the necessary examination: He says the secretary of the Board of Medical Supervisors has correctly followed the law in declining requests. "It appears that the State of Virginia does not issue licenses to practice medicine to licentiates of the District of Columbia upon the conditions specified in the act of Congress. It therefore follows that licentiates of the State of Virginia are not entitled to practice medicine in the district until the license is issued by the Board of Medical Supervisors. It is requested in this case that a temporary license shall be issued pending the examination of the board. I am of the opinion that the law does not authorize this, and that, therefore, the board is without authority to issue a temporary license."

Exchange of Registration Between Indiana and Illinois.

On condition that the State Medical Board of Illinois admit Indiana doctors to practice in that State without special examination, the sole requisite being that they shall have a special certificate showing that they have taken the necessary examination under the Illinois board, the Indiana State Board of Medical Registration and Examination decided recently to admit Illinois physicians to practice in Indiana without special examination.—*New York Medical Journal.*

According to the *Chicago Medical Recorder* for July, the Supreme Court of Iowa recently rendered a decision declaring that the State Board of Medical Examiners possessed the right to revoke the license of any physician whom it considered incompetent to practice medicine.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE

PHYSICIANS DEFENSE COMPANY

Fort Wayne, Indiana

VOL. I | OCTOBER 1902 | No. 1

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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EDITORIAL NOTES

THE MEDICO-LEGAL BULLETIN owes its inception to the numerous requests of medical practitioners for reliable and accessible information relative to the laws governing the practice of medicine, the relation of the physician to the public and the State, and his rights, duties and liabilities under those laws.

It has become axiomatic with our courts that "every one is bound to know the law." Especially is this true when one occupies a quasi official position, or is engaged in a profession regulated by statutory provisions. Law is but the expression of the supreme power of the State, commanding and prohibiting right and wrong, and providing penalties for the non-performance of duties and obligations. It is expressed by judicial decisions as "Common Law" handed down from time immemorial, and by legislative enactments in the form of statutes.

In ancient days, medicine being the hand-maiden of religion, and the exclusive function of the priests, was exempt from state control, its votaries being accountable only to divine law. But as the science gradually withdrew from religion, and its practitioners devoted their attention to man's physical welfare only, there has gradually been built up by constituted authority, a system of Legal Medicine, which not only prescribes the

requisite degree of knowledge qualifying admission into the profession, but provides in comprehensive terms, laws and regulations governing the practice of medicine and the practitioner's liability to State and patient. The aim and development of these laws and regulations has resulted in the special science of Medical Jurisprudence, a more thorough knowledge of which should be possessed by every practitioner in order that he may intelligently discharge his professional obligations to the State and society.

One would naturally suppose that a subject of so much importance would receive special attention in our medical schools. But such is not the case, for although catalogued and assigned to a professor for a lecture or two every week, the graduate blossoms forth a full-blown practitioner, with a knowledge of the subject limited to the requirements of reporting births, deaths, and contagious diseases, and an unwarranted faith in the prophylaxis of "holding his property in his wife's name."

If we seek for this information in the medical literature of the day, we find that although there are at the present time over two hundred and eighty medical journals published in the United States alone, still the field of Legal Medicine is but barely touched, and this in a way which can be made of little practical benefit to the medical man in his time of need. To do something toward furnishing information on this subject, which will come within the reach of the physician in the form of practical benefit, is the object of this journal, and in attempting to fulfill the above requirements, THE MEDICO-LEGAL BULLETIN will simply be what its name indicates, a brief resume of Legislative Acts and Judicial Decisions affecting the profession, together with departments devoted to Legal Medicine in its various branches.

The co-operation of the entire medical professional is most earnestly desired to the end that there may be formed a solidarity, offensive and defensive in the interests of the profession. The publishers agree to devote their energies to this end, and as to results, propose that THE MEDICO-LEGAL BULLETIN shall speak for itself.

We solicit your suggestions, articles, queries and co-operation.

An Outrage.

We have received from Wilkesbarre authoritative confirmation of an almost incredible report that a mob of strikers had assaulted a physician for the crime of attempting to dress the wounds of another of its victims—whose offense, in turn, had been his accepting as boarders a group of strike-breakers. The physician in question—for whose reliability our correspondent vouches—states that he was seized by the mob, had his clothes torn, and was roughly handled generally. The man whom he attempted to relieve had been brutally beaten. Such outrages as these, no matter how much they may be frowned upon officially by the strikers' organization, must and should turn public sentiment against it. An organization that claims rights must perform duties, and it is the duty of the union to prevent such outlawry on the part of its members.—*The Outlook.*

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

In the mandamus proceedings against the Board of Trustees of the Western Pennsylvania Medical College, to compel the defendants to award the plaintiff, F. K. Addy, a degree of Doctor of Medicine, an opinion was handed down adverse to the plaintiff. The court held that "the refusal of the trustees to approve the recommendation of the faculty that a degree be granted, was solely a matter for the trustees, unless in a case of bad faith or in violation of the principle of right and justice." The faculty cannot give or authorize a diploma, under the law, until the same meets with the approval of the trustees.

Paris Physician Fined.

A Parisian judge recently fined a physician two hundred francs, and decreed that he reimburse the plaintiff one thousand francs additional to soothe the mental anguish occasioned by a wounded heart. The physician was called to attend the plaintiff who suddenly became seriously ill at the home of his sweetheart. The medical attendant disclosed information to the prospective mother-in-law, which had the effect of annulling the engagement. As this was a privileged communication which the physician had no right to divulge, a verdict against him was the result.

An Important Malpractice Decision in Ontario.

Justice Falconbridge, of Toronto, has recently delivered judgment in a malpractice suit which has caused no little interest among the profession in the Province of Ontario. The case was tried recently at the Toronto non-jury sittings and was brought by a woman against two brothers of an Eastern Ontario town who were practicing in partnership. The case arose through the dislocation of the astragalus, treatment of which had been interfered with by the patient. The statute of limitation in Ontario required that suit be instituted within one year, and the judgment upon this point is particularly interesting to Ontario physicians. The learned judge held that

"consulting another surgeon (which the plaintiff had done) in the absence of, and without notice to or leave of the surgeon in charge, is an indication of want of confidence in the latter, and would of course be treated by him, when he came to know of it, as tantamount to a dismissal of him by the patient." The burden of evidence clearly showed that the patient had been properly treated by the defendants, and the case was dismissed against the defendants on all the counts.—*Medical News.*

A case of great importance to the medical profession was recently decided by the Supreme Court of Idaho. One L. F. Inman upon being arrested for practicing medicine without having complied with the requirements of the board, applied for a writ of habeas corpus on the grounds that the law was unconstitutional. The court held that the medical law was valid, and that due proceedings were had in the plaintiff's arrest.

Action for Damages for X-Ray Burn in France.

Treatment for July 27th thinks that the following case may perhaps bear recounting, owing to the satisfactory result: Mme. Mochert, a young lady of Paris, recently brought a suit for five thousand francs damages on account of an alleged X-Ray burn. The plaintiff had an affection of the thigh which the doctors advised should be skiagraphed. The thigh was exposed three times without protection, with a total duration of sixty minutes.

Dr. Bardet, one of the witnesses, testified that burning would result in rare instances from the use of the Roentgen rays. Everything depended on the patient's physical condition. He maintained that if the doctors were made responsible for such accidents they would be obliged to renounce the use of the X-Rays. The medical man was acquitted.

Payment for Expert Work Enforced.

Dr. R. A. Witthaus has recently won a suit against the city of New York for $6,639.65, which he claimed was due him for making a chemical analysis of the stomach of H. Barnett, whose death was one of the significant features of the people's evidence in the Molineux murder trial. Dr. Witthaus contended that he performed the analysis at the instigation of ex-District Attorney Gardiner, and that he had put in 366 hours' work in making the analysis. His charge was $15 an hour, with $250 for consultations and $500 for incidentals. Comptroller Coler had refused to pay the bill when it was presented, contending that it was exorbitant. The verdict rendered included $459 for interest on the amount sued for.—*Medical Record.*

Comments and Queries.

Queries addressed to this department of the MEDICO-LEGAL BULLETIN will be recorded and answered through these columns if of general interest, but if of a personal nature they will be answered by direct correspondence.

Threatened Action for Damages Against the Ohio State Board for Refusal to License a Physician.

S. R. W., of Ohio, writes that he "is a graduate of ———— School of Medicine, and through some influence brought to bear upon the Board of Reg——— I could not register my diploma in this State. I want to sue the Board, and see if I cannot make them register my diploma, and also for damages."

The writer of the above letter does not give the reason assigned by the State Board of Registration for refusing to register his diploma.

The law of Ohio provides, that "all applicants for license shall file with the Secretary of the Board a written application, and furnish satisfactory proof that the applicant is more than twenty-one years of age, and of good moral character." He shall also present to the Board his diploma as a graduate of medicine, and pay an examination fee of twenty-five dollars. The regular meetings of the Board for examinations are held on the second Tuesday of June and December. The applicants will be examined in Anatomy, Physiology, Ethology, Chemistry, Materia Medica and Therapeutics, the Principles and Practice of Medicine, Surgery, Obstetrics, and such other subjects as the Board may require. The affirmative vote of not less than five members shall be required to authorize the issuance of a certificate.

The qualifications requisite to practice medicine in Ohio, and the powers of the State Board of Registration have been explicitly stated by the Legislature. The constitutionality of these provisions has been upheld by the Supreme Court in many instances. That the Legislature has the right to require medical practitioners to conform to reasonable standards of qualification is without question.

> "One who has an established practice in the healing of diseases, may be required to conform to such reasonable standard respecting qualification therefor as the General Assembly may prescribe, having in view the public health and welfare."—*State vs. Gravett, 62 N. E. 325.*

The diploma presented by the physician desiring to practice medicine in

the State of Ohio, must be one from a school recognized by the Board as in good standing. In other words, the school at the time the diploma was granted, must have been conforming to the requirements of the Board relative to the years of study, the facilities for teaching, etc.

The statute confers absolute discretionary powers on the Board. It is for them alone to pass on the school, whether it is in good standing or not, and the courts will not recognize an appeal to any other source.

> "Whether a diploma presented by one who desires a certificate authorizing him to practice medicine is from 'a medical institute in good standing,' is to be determined, in the first instance by the Board of Medical Registration and Examination, and not by the court."—*State vs. Hygeia Medical College, 54 N. E. 86.*
>
> "Rev. St. § 4403 C, as amended (92 Ohio Laws, P. 4445), confers on the State Medical Board the power to determine whether a diploma presented for its action is issued by a legally chartered medical institution, 'in good standing,' and, if determined not so, refuse the holder a certificate to practice medicine, gives the Board discretionary power, and mandamus will not lie to compel the issue of a certificate to the holder of a diploma."—*State vs. Coleman, 60 N. E. 568.*

The fact that the school of medicine may be considered as in good standing by the Board of one State, has no weight, before the court, as in any manner affecting the decision of the Board of another State; neither does a diploma from such school vest any right in its holder where the State Board has ruled the school not in good standing.

> "The recognition by the constituted authorities of another State that a person was properly qualified to practice medicine, and that the medial college whose diploma he presented as evidence of that fact was a medical college in good standing, does not carry with it a vested right in the party to practice medicine in Louisiana."—*Allopathic State Board of Medical Examiners vs. Fowler, 24 So. 809.*

On October 3, 1901, Superior Judge Hunt denied a writ of mandamus to Dr. J. J. C——— to compel the Board of Medical Examiners of the State of California to issue to him a certificate to practice medicine, which was denied by the Board, as it held the school of graduation, "Pacific Coast Regular College of Medicine," not in good standing.

The Appellate Court of the State of Illinois holds that the State Board of Health is possessed of discretionary power to determine whether a medical college is in "good standing," and its action is not subject to review by mandamus proceedings. This decision was rendered on appeal from the Superior Court which had granted a peremptory writ of mandamus, directing the State Board of Health to issue a license to Dr. Bailey. The Appellate Court says that "mandamus will not lie to compel the performance of acts or duties which necessarily call for the exercise of judgment and discretion

by an officer or body, at whose hands their performance is required, unless it is made clear to appear that there has been abuse of discretion by the officer or body."

From the above decisions and in the absence of definite reasons on the part of the State Board of Ohio for refusal to register S. R. W.'s diploma, we are inclined to the belief that he probably has no redress in the matter, either by action to compel the registration of his diploma or by one of damages against the Board.

Charter Refused for the Third Time to the First Church of Christ, Scientists, in the State of Pennsylvania.

According to the Associated Press dispatches, for the third time in five years the First Church of Christ, Scientist, has been denied a charter in Pennsylvania. In 1897 the application was refused on the ground that the "church" was organized for the practice of medicine and that its members did not possess the requisite knowledge and qualifications. Early this year their application was again denied on the ground that the members advocated a doctrine contrary to the laws of the State, "that disease does not exist."

The last adverse decision was on September 15, 1902, by Judge Arnold, who says:

The charter applied for in this case covers a double purpose—a church and a business. We have power to grant a charter for a church, but we have no authority to grant a charter for a corporation for profit, that is, a business corporation.

That the application is for a charter for a corporation for profits is shown by the statement in the proposed charter that the purposes for which the applicants desire to be incorporated are: "To establish and maintain a place for the support of public worship and to preach the Gospel according to the doctrine of Jesus Christ, as found in the Christian Science textbook, by Mary Baker G. Eddy." What the Gospel, according to the doctrines found in the Christian Science textbook is, is shown in an article signed by Mrs. Eddy and published in the *Christian Science Journal* of March, 1897, in which she has written that "The Bible and a book written by me, called 'Science and Health, with Key to the Scriptures' and my other published works are the only proper instructors for this hour. It shall be the duty of all Christian Scientists to circulate and to sell as many of these books as they can. If a member of the First Church of Christ, Scientists, shall fail to obey this injunction it will render him liable to lose his membership in this church." This shows that the so-called church is a corporation for profit, organized to enforce the sale of Mrs. Eddy's books by its members, which is a matter of business and not of religion.

A Bit of History.

The Physicians Defense Company was organized under a general statute of Indiana providing for the creation of corporations for numerous and miscellaneous purposes. The particular clause of it authorizing such a corporation as the Physicians Defense Company is as follows: "21. To organize and maintain companies or associations for the purpose of aiding, indemnifying and protecting the medical profession in scientific researches and in the practice of medicine and surgery."

This is not any part of the insurance laws of Indiana. It is a wholly different statute. The Attorney-General of that State has held that the company is not an insurance company under the laws of Indiana. The question has been submitted to the insurance commissioners of a number of States, and in every instance, where the company is now actively at work, they have ruled that the business is not one of insurance under their laws.

The company was originally incorporated in June, 1899, under the name of The Physicians Guarantee Company, as a result of the active work on the part of Dr. A. P. Buchman, Professor of Diseases of the Digestive System, Fort Wayne College of Medicine, Fort Wayne, Indiana. The company started with a capital of $50,000; this was increased during the year 1900 to $100,000. In April, 1902, the company was reincorporated under its present name on account of the word "guarantee" creating a false impression in the minds of the public and medical profession. It came into existence in response to the widely expressed wish of the profession for some means by which the united resources of its members could be made available against a common enemy.

It is recognized that the increasing number of claims for alleged malpractice in recent years is, for the greater part, the work of blackmailers, abetted by a class of lawyers willing to champion any cause for the chance of a contingent fee.

A suit for malpractice, no matter how baseless in fact, is always an injury to the reputation and good name of a physician. The small circle of friends who know his innocence of the charge may be unmoved by it, but to the general public the mere bringing of the suit raises a presumption against the physician, and does him a personal and pecuniary injury. It is the knowledge of this fact, and in the hope that the physician will pay something rather than submit to the annoyance and loss involved in defending a suit in court, that many false claims for damages are made.

The mission of the Physicians Defense Company is to do something toward making an end to this bucaneering by putting it within the power of every physician to provide himself at small cost with the means of making such vigorous defense against such claims as will not only vindicate him in his own case, but contribute to deter others from bringing like suits.

The company prosecutes its business by issuing to individual members of the profession, for an annual consideration of twenty dollars, what it terms a defense contract. This contract provides, that if the physician

holding it is sued for damages for civil malpractice the company will defend the suit for him. It will pay all expenses of attorney's fees, witnesses and court costs to the limit of five thousand dollars in each case; and it will make this defense in all suits brought in which the cause of action arose during the life of the contract, no matter when they are brought, with only this limitation: that it shall not be bound to expend more than ten thousand dollars in defense of cases in which the cause of action arose in any one year of the life of the contract. That is to say, for every annual payment on his contract the physician has the obligation of the company to spend ten thousand dollars for him, if necessary.

It is required of the contract holder that he shall at once notify the company at its home office in case of suit brought. The company will send its represenative to the ground, and, upon consultation together, the physician and the company's representative will select a local attorney to co-operate with the company's regular attorneys in defense of the case. After that the physician has no further responsibility, except to give his testimony, if required, and give the company's attorney the benefit of all information within his knowledge and his assistance in the preparation of the defense. The company will contest the case by all means known to the law and to the highest court to which an appeal can be taken, subject only to the limitation of five thousand dollars outlay in one case, and ten thousand dollars in cases arising from services rendered in any one year during the life of the contract.

The contract of the company provides that it shall not be under obligation to pay or assume any judgment rendered against a contract-holder after all legal means of defense have been exhausted. It may be asked, "Why does not the company go one step farther and make the protection of the physician complete by paying the judgment, if it should be unsuccessful in its defense of him?"

There are two serious objections to it. In the first place it is an invitation to bring suit. It is notice to the blackmailing shyster that the money is ready to pay his judgment, if by hook or crook, he can get one. In the second place, it will help the shyster get his judgment by assuring the jury that the burden will not fall on their neighbor, the doctor, but on a corporation whom they may be willing to stick with a verdict for damages on any pretext.

The desideratum of first importance to the physician is not to be sued; next in importance is a successful defense. To carry a contract, the effect of which would be to invite suits if its existence were known, and then make it harder to defend them when brought, would be of doubtful advantage to a physician.

There are several features of special value in this contract to the physician:

There is first its money value. If he is sued he has a fund provided beforehand for his defense. That would be worth all the consideration

which he pays, if the contract provided nothing more. But that is, in fact, the least valuable feature of the contract. A physician sued for malpractice usually makes his defense at a great disadvantage. The cases are so infrequent that lawyers are not prepared for them. They have not the books which they need in order to be prepared for them. They are not familiar with the decisions in that branch of the law. An incompetent lawyer is not fit to try any case; a good lawyer is always a busy man, and cannot take time to study a wide field of the law for the trial of one case.

What a physician needs in his attorney at such a time, is, first, a thorough, all-round knowledge of the law, generally, and second, a thorough knowledge of the special department of medical jurisprudence. This is a field in itself, as peculiar and difficult and important as the field of corporations. insurance or patents. The modern tendency in all professions is to specialization. That tendency is manifest in the law to-day. Wherever the business justifies it we have corporation lawyers, admiralty lawyers, mining lawyers and criminal lawyers. There is no such specialty as malpractice lawyers, because the business is so scattered that there is not enough of it in one place to make it pay for the labor and expense of special preparation and attention. It is the design of the Physicians Defense Company to supply this want by having at its command a corps of attorneys, who are, in the first place, good, all-round lawyers, and who add to that, the special study and practice of malpractice litigation. They have at their command all the books published on this subject, and all the cases ever decided in this department of the law. They have arrangements by which they keep track of all the current decisions in cases of this kind. They are therefore equipped with all the weapons of defense in malpractice suits, and prepared on short notice to bring into a case an amount of information which it would require months of study for a general practitioner to acquire.

At the same time the physician is not required to risk his defense in the hands of lawyers who are personally unknown to him. He is entitled to the services of a lawyer in his own county in whose selection he shall have a voice.

It is the policy of the company to employ the best lawyer at the bar of the court where the case is pending; his fees, of course, being paid by the company. Such a combination of legal talent and skill is the best that it is possible to make for the successful defenses of this kind.

There is another advantage in membership in this company which is of no small value. The company is, in a true sense, a medical defense union. It brings together in the only practicable way in which that result can be effectively accomplished, a large body of physicians, and unites them against a common advisary and a common danger. The company will keep them informed from time to time of important laws or decisions affecting their interest, and will receive and use items of interest from them. Its counsel will, within reasonable bounds, answer questions from its contract

holders on legal points of interest to them. And, more than all, it will cultivate a spirit of comradeship in the profession, now happily already manifesting itself in many ways.

The greatest advantage, however, of membership in this organization is its prophylactic influence in the members' behalf. As it becomes generally known that physicians have availed themselves of this liberal protection and defense, the unprofessional attorney and ungrateful patient have great hesitancy in prosecuting these actions. In a number of the larger cities where the company maintains a local office its agents have been called upon by attorneys seeking a list of its members, and have frankly stated that if it was furnished no action would be undertaken by them against any member of the organization. The great majority of malpractice suits threatened against members of this organization never come to the attention of the public nor to trial, being prevented by the company, which demonstrates to the attorney threatening suit on a contingent fee that it stands between him and the physician to the extent of five thousand dollars, and that the case will be contested to the court of last resort, whereupon in the words of Dr. J. M. Singleton, of Kansas City, "they lose their zeal."

During the three years of the company's existence it has received the indorsement and support of thousands of the leading medical men throughout the country. It has hundreds of unsolicited letters from physicians who have had need of its services, expressing the highest appreciation of membership in its organization.

The company desires to unite under its banner, "Prophylactic in Alleged Malpactice," all reputable members of the medical profession. "To the end," in the words of Dr. Nicholas Senn, "that the defense be made impregnable by their united support."

Will you not join in this commendable work, and by your membership and influence assist the Physicians Defense Company in putting it beyond the power of unscrupulous attorneys and malignant patients to ever again secure a verdict against a reputable physician for *alleged* malpractice. Fill out the application blank on page 28, mail it with your check for twenty dollars to the Physicians Defense Company. Do it to-day, and by return mail you will receive the contract for *Defense;* then you can say with Dr. J. E. Summers, Jr.: "Peace of mind and security from financial loss and incidental worry over damage suits are done away with by the possession of one of your contracts."

Contract No.---------- ----------*Agent* **$20.00**

I hereby apply to the

Physicians Defense Company

Fort Wayne, Indiana

For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is.....Office No.....St.

City of.....County of.....State of.....

If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice

in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions.

Date.....190... (Applicant's Signature).....

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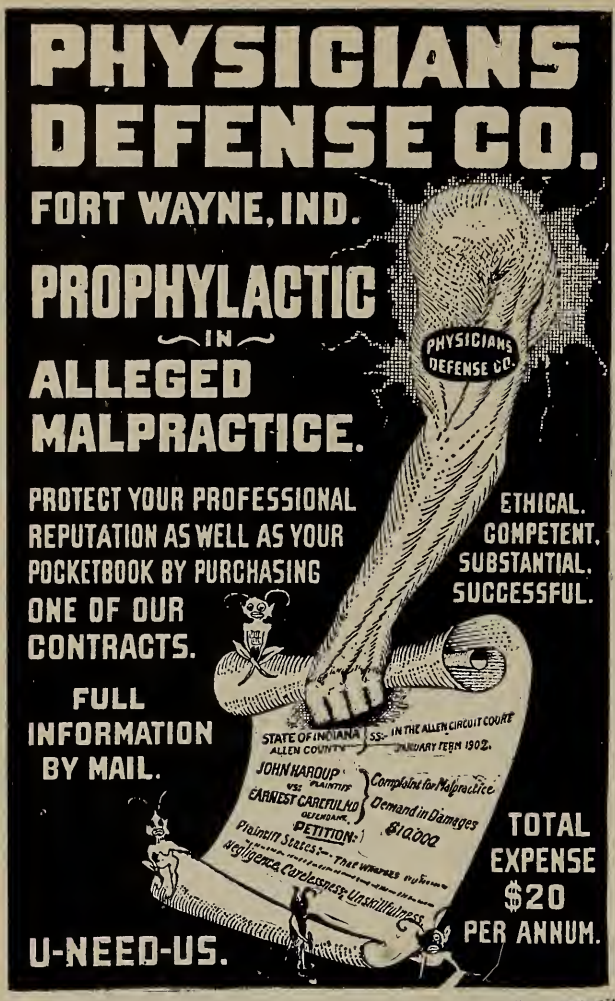

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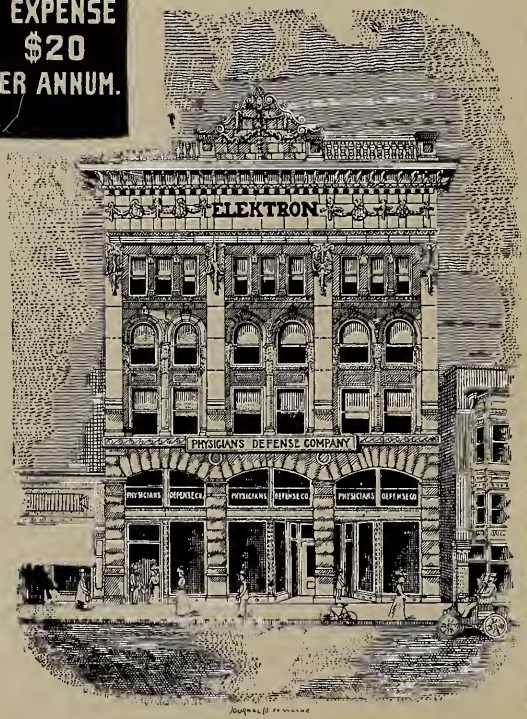

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The Twenty-fourth Annual Session of the Fort Wayne College of Medicine opened September 9th, 1902, and will continue, with usual holiday vacations, seven months.

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NOVEMBER 1902

MEDICO-LEGAL BULLETIN.

Vol. I No. 2

SPECIAL ARTICLES

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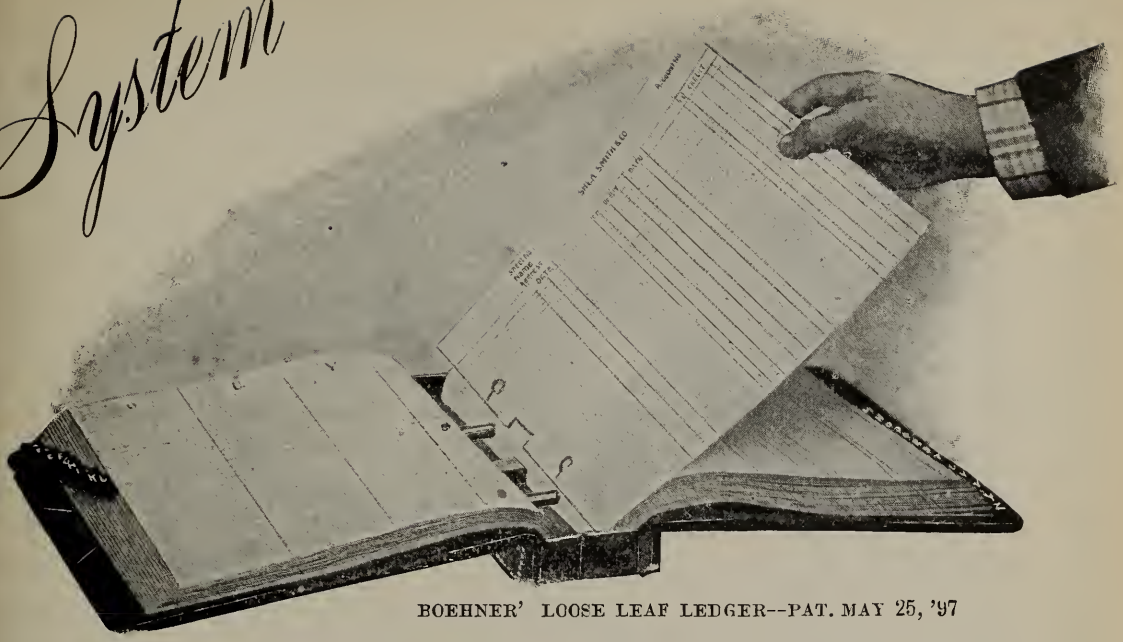

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If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

I agree to notify the Company at once by telegraph or telephone when demand is made. or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions.

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THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract and to pay all the cost and expense of defending such suits not exceeding **FIVE THOUSAND DOLLARS** in defense of any one suit not exceeding in the aggregate **TEN THOUSAND DOLLARS** in defense of suits based on services rendered within one year from the date of this contract or within any one year for which this contract shall be renewed all in the manner and upon the conditions herein below stated, to wit:—

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__

A. D. Buchman,
President.

_____
Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

Origin and Growth of Physicians' Liability.

The opinion is commonly advanced that medicine derived its origin in all countries from religious observances. In ancient Egypt and India the priests, who were practically the only persons who had any education, were charged with medical functions. Their treatments mainly aimed at promoting cleanliness and preventing contagion. Among the ancient Hebrews the priests alone did what healing was done. In Greece Aesculapius was famous for his surgical and medical skill. Temples were reared for his worship, which became repositories for medical knowledge. The priests of Aesculapius were not physicians in the true sense. They depended upon the dreams of the patient or his representative to show the remedy. Homer in his poems describes a distinct and organized profession and a course of treatment which must have been the work of long experience to frame.

The first great exponent of medical science seems to have been Hippocrates, and the art as we now practice it and the character of the physician as we now understand it both date from him. He was of a family of priest physicians and threw aside the superstitions of his ancestors and based his theories on inductive philosophy. He was styled the "Father of Medicine," and was in constant demand throughout the country. His descendants established several schools of medicine and many practitioners of Hippocratic medicine were educated there.

This period was the beginning of the individuality of the physician. He separated himself from ecclesiastical ties and began to develop a system, the foundation of which has survived to this day. It taught him to use his own faculties and to observe the conditions and symptoms of each patient and record what he

found, and then use that record with a later case with which he came in contact. Other schools of medicine were established and the science began to develop and expand rapidly. Great strides were taken during the succeeding centuries which followed, and we find that the nineteenth century has done more for the improvement of medical practice than all that have gone before.

With all this advancement in medicine, the skill and ability of the practitioner has had to keep pace. As the people became more intelligent they expected more and more of their physicians, and naturally the physicians must be possessed of more skill and use greater care to meet the demand of the people. At first the priest physicians were morally responsible to their Supreme Master for their professional acts; the state or patient did not have any cause to complain of any ill treatment. Later the Egyptian physicians regulated their treatments according to written precepts collected and transmitted by the most celebrated of their predecessors. If they followed these precepts and failed to cure their patients they were not responsible for that failure, but should they not follow those precepts and a cure was not effected, they might be condemned to death. In ancient India the practice of medicine was limited to certain casts, and before any person could practice he must have pursued a certain method of instruction and receive the sanction of the Rajah, and be responsible to him for his acts. The Greeks had a high conception of the duties and status of the physician, as shown in the "Oath of Hippocrates," in which, among other things, a physician swore that he would "not administer or advise the use of poison, nor contribute to an abortion." The practitioners of the Hippocratic school were very skillful in the use of the materials and tools they possessed and were held in high esteem by the people. They were made responsible in some degree to their patients for their acts.

As society further advanced and physicians and surgeons acquired more and more knowledge, which is of vital importance to the welfare of society, the law subjected them to certain duties and liabilities commensurate with the value and importance of the exercise of that knowledge.

At first the liability for neglect or failure to cure was confined to the Supreme Being, then to the public, and finally to the individual. The early law made the physician an absolute guarantor of a cure; then a modification came, as stated before,

that if he followed certain definite precepts which were laid down and he failed to make a cure, he was not liable, but if he did not follow those precepts in the least particular, he was liable. There was then no room for the exercise of judgment in any treatment. The questions of skill and care kept attaching themselves with stronger and stronger ties, until in the code of Justinian it was provided that a physician who was neglectful or was unskilful in his treatment of a slave, leading to the death of the slave, was liable to the owner in damages for the value of that slave. The slave was, of course, a form of personal property and any injury to personal property was subject to damages under the Justinian code. This rule of liability, it will be noticed, refers explicitly to the carelessness and unskilfulness of the physician—whether it consists in a failure to use skill and care in doing what he did, or in failing to do what he should have done. It is, perhaps, the first statement we have which places the liability of the physician in this direct form.

The common law of England is derived from immemorial usages and customs. But it is something more than a body of usages; it also embraces the principles which underlie the usages or which so harmonize with them that the courts are justified in accepting them as the basis for judicial action, and as forming with the usages a consistent body of law. Judicial action has, however, been the real origin of common law. It has accepted many things for law and rejected many others, and by a sifting process has made the law what we find it.

England, having been invaded by so many different sects, who brought with them their own laws, finds the usages and customs of those people remaining as part of her common law. It is natural to suppose that these various requirements and liabilities placed upon the profession by continental peoples crept into use in England and remain as a part of its law in one form or another. It is also true that the English common law drew from the Roman law the rules pertaining to negligence, and as the medical profession grew in skill and numbers it was natural that the occasion would arise when it would be necessary to place some restraint upon the practitioner's conduct. The elasticity of the common law enabled the courts to apply the general rule of negligence and make it fit the case of the physician. This rule held the physician responsible for negligence in treating a patient, the degree of negligence varying in the opinions of the different courts that passed upon it. Some made the rule very

stringent, requiring the utmost care and skill on the part of the physician; others required only ordinary care and skill. The trend of the decisions drifted toward ordinary care and skill as most reasonable to be imposed.

The common law of the United States is that of England as brought over by the colonists. Judicial decisions and the usages and customs of the various States determine how far that common law has been introduced and sanctioned. The English rule of liability just stated was not adopted at first in the United States. In an early case, McCandless v. McWha, 22 Penn. St., 261, the court held that the physician must bring to the practice of his profession a degree of skill and diligence such as those "thoroughly educated in his profession ordinarily employ." This is a severe rule. It would require the same degree of learning for all physicians alike, no matter where they lived. It would be fixing a standard of professional skill and attainments which in the small towns, rural districts and newer portions of the country would be impossible. Since this case, many others have stated the English rule in various ways, adding to it and leaving off certain elements which go to make it up. No better statement of this rule can be found than that given by the Supreme Court of New Hampshire in the case of Leighton v. Sargent, 7 Foster, 460. The law applicable to the physician and surgeon was there stated to be that he is never a warrantor of a cure in the absence of an express stipulation. He contracts that "he possesses that reasonable degree of learning, skill and experience which is ordinarily possessed by the professors of the same art or science, and which is ordinarily regarded by the community and by those conversant with that employment as necessary and sufficient to qualify him to engage in such business. There must be brought to the case a reasonable degree of skill and no more." He also contracts that he will "use reasonable and ordinary care and diligence in the exercise of his skill and the application of his knowledge—such care and diligence in his employment as men of common care and common prudence usually exercise in their own business of a similar kind." He must also use his best judgment. "Ordinarily good judgment is necessarily implied in the possession of ordinary skill, and if such share of judgment is fairly exercised, any risk from mere errors and mistakes is upon the employer."

It is apparent that this statement contains the most favorable rule which could be applied. The physician, by reason of his special education and teaching, is fitted to perform functions

which a layman cannot. The rule thus laid down places no more restriction upon his operations than are reasonable. If they were more stringent, if the physician was bound to produce a cure or was compelled to use extraordinary skill and care in every case, the usefulness of the profession would be considerably weakened. A physician would not take a case unless he was positive he could cure the patient, and without danger to himself. It would tend to prevent advancement, for nothing new would be attempted. The profession would, therefore, lapse into a state of decline and be of service only in ordinary simple ailments.

The courts of the various states have almost unanimously adopted this rule set forth in Leighton v. Sargent. Some have added to it other requirements, to the effect that in determining what constitutes ordinary skill and care the advancements made in the profession must be considered. This is not unreasonable, for no standard of skill and care would be of use that did not provide for improvement, accompanying better means for acquiring knowledge, and opportunities for observation.

In conclusion, the physician and surgeon is as well protected by the law as he can be. Blackmailers will always be found ready to extort money where they imagine they can do so; but by placing the responsibility as low as it safely can be—that of liability for failure to exercise ordinary skill, care and diligence, and placing the burden of proof of such a failure upon the plaintiff—the law has done its duty. Time may work a change, advancing civilization may demand a reorganization of things, but the law in regard to the profesison which deals with matters of such vital importance to society as the medical profession, ought never to be made any less favorable nor more severe than is reasonably necessary to preserve the high standard to which it has risen.

A curious exposition of callousness and greed was recently made in a civil suit brought against a Colorado surgeon. He became interested in the case of a cripple whom he had found begging on the street, and by an operation requiring great skill, removed his disability. The relatives of the cripple promptly brought suit against the physician for removing their means of support, claiming that as a cripple the youth had brought them in an average of $5 daily, while now they were compelled to support him until he could gain means of earning his living. The judge promptly dismissed the case on hearing the presentment of the prosecution.—Am. Jour.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

*Medical Reciprocity; or, Interstate Exchange of Licenses.

BY B. D. HARRISON, M. D.

The reciprocal exchange of certificates of registration or licenses by one State with another is not a new or recent idea with the medical profession of the United States. The inconvenience, injustice, unnecessary labor, and expense connected with the change of location from one State to another of a properly-qualified and ethical practitioner has long been recognized and commented upon, and various means have been suggested to overcome this anomaly in American medical practice.

Within the past few years a great many of the States, which either had no medical legislation or a very insufficient medical act, have obtained from their legislatures a more or less effective medical act, and in addition to the prevention of the registration and practice within their borders of incompetents, it has also necessarily, but without purpose, raised a barrier against the holders of reputable and standard qualifications registering and practicing in other States, who for one reason or another desire to change their State location, and who before such legislation was effected could comply with the laws relative to medical practice. In other words, while recent legislation in a large number of the States has cut off and given the quietus to a very large and ever-increasing supply of incompetent and fraudulent practitioners, it has also cut off to a large, if, perhaps, to a

*Read before the Upper Peninsular Medical Society at its annual meeting at Ishpeming, July 15, 16, 1902.

lesser, extent, the supply of experienced and properly-qualified practitioners from without States.

Therefore, the trend of medical legislation has been more favorable to the recent graduate, while it has not been quite so favorable to the older and more experienced, and yet properly-qualified practitioner. Then, again, as all medical legislation, directly and materially, benefits the people generally, necessary legislative restrictions which prevent a reputable and properly-qualified practitioner from changing his State residence is certainly not productive of benefits that would be otherwise derived from a freer exchange of a good article in the form of a desirable medical practitioner.

A number of the States that recognize the benefits of interstate exchange of licensures have provided more or less fully for such exchange in their respective acts, namely, California, Delaware, District of Columbia, Illinois, Indiana, Kansas, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Porto Rico, Texas, Virginia, Washington, and Wisconsin. Of the above-named States Illinois, New Jersey, Ohio, and one or two others, provide for only partial or modified reciprocity; that is, these States can exchange certificates or licenses obtained by an examination before a State board, provided the holder thereof is possessed of a medical diploma recognized by the two States in reciprocity, and also has a recognized certificate of preliminary education. In other words, the latter States' acts mentioned provide for the going out and coming in of a very recent graduate in medicine, and denies these privileges to the teachers and examiners of such graduate.

Without fear of successful contradiction, I contend that if reciprocity is to become a fact as well as a theory, it must be brought about by the influence, action, and co-operation of the several State medical boards, not through individual members of boards or by other members of the profession, who may have the necessary knowledge and enthusiasm, but who actually have no authority or means to do anything practical in the matter.

While the National Confederation of Members of State Examining and Licensing Boards have undoubtedly done good work in the way of education, still it does not represent the authority necessary to accomplish practical things, and its members, who are also members of State boards, could have done more real good by advocating and working for reciprocity within their several State boards than as members of an association which

represents no authority. This they have not done to any very appreciable degree.

As State boards represent the authority to do things, and as its members in nine cases out of ten are responsible for and the authors of the medical acts, or represent those who are so responsible, it seems to me that only through the boards can effective action be had in the matter of reciprocity and uniformity and elevation of the standard of medical requirements for a license to practice medicine in the several States and Territories. This special work should be undertaken by an association or confederation of boards, not by a confederation of board members.

In October, 1901, the Michigan board passed the following resolution:

"Resolved, That the secretary of this board be requested to open communication with the secretaries of the boards of neighboring States, with a view to the adoption, in the near future, of some practical system of reciprocity."

Considering the subject thoroughly before taking any action, and obtaining all the information possible relative to reciprocity, I selected the States of Wisconsin, Indiana, Illinois, and Ohio as objective points to work on, and for the reason that all of the above States had provisions in their medical acts for reciprocity, and were, geographically, in a group known as the Central Western States.

Correspondence elicited the information that all of the above-named States, with the exception of Ohio, were willing to enter into reciprocal relations, of one form or another, with Michigan and with each other. I then suggested a meeting of the executive officers of the several boards interested, which was agreed to, with the result that two meetings were held in Chicago in January and May last, resulting in the formation of the American Confederation of Reciprocating Examining and Licensing Medical Boards.

The following quotations from its constitution are self-explanatory:

"The object of this confederation shall be to establish reciprocal relations between the medical examining and licensing boards of the States, Territories, districts and provinces of the Unites States; the purpose of which being that thoroughly worthy and well-qualified physicians and surgeons, who have been legally authorized to practice under the laws of one of said

States, Territories, districts, or provinces, may be given authority and be admitted to practice in any State, Territory, district or province represented in this confederation, without a repetition of the tests of qualification to which such practitioner has submitted."

"Any examining or licensing board of any State, Territory, district, or province of the United States, having a medical practice law requiring an examination before said board and requiring thorough professional qualifications as the basis of legal authority to practice in said State, Territory, district, or province, and providing for interstate reciprocity, shall be eligible for membership in this confederation, and may obtain membership by the signature of its authorized representative to this constitution, and maintain such membership by compliance with the requirements of the constitution and by-laws of the confederation."

"It shall be the duty of each examining or licensing board having membership in this confederation to draft and spread on record in its home office a resolution embodying the basis of reciprocal recognition of applicants from other reciprocating States."

The confederation also adopted the two following qualifications as a basis upon which to exchange State licenses with those States in present membership, namely, Indiana, Wisconsin, Illinois, and Michigan:

Qualification No. 1.—That a license or certificate of qualification of at least one year's date, based upon presentation of a satisfactory diploma, and an examination before a State board in specified branches of medicine and surgery, may be accepted at the discretion of a board in lieu of an examination, and as a basis upon which the license of a State may be issued.

Qualification No. 2.—That a license or certificate of qualification, issued by a State board of registration or medical examiners of at least one year's date, based upon presentation of a satisfactory diploma, and upon the recommendation of a State board of registration or medical examiners as to the reputability of the applicant, may be accepted at the discretion of a board in lieu of an examination and as a basis upon which the license of a State may be issued.

It will be noted that simply a policy was adopted relative to reciprocity, leaving it for the individual boards in membership to adopt a standard of preliminary and medical qualifications.

This standard must be adjusted by the boards entering into reciprocal relations, but, as far as the standard is concerned, the trend will necessarily be upward.

The dividing line or date between Qualification No. 1 and Qualification No. 2 will have to be set by individual reciprocating boards. No. 1 including only those applicants for the exchange of certificates who have obtained their certificates through a State board examination, and No. 2 including those reputable practitioners who have re-registered under a re-registration clause, or who have obtained their certificates upon the basis of graduation from a recognized or listed college, or who have obtained such licenses previous to the adoption of the dividing line or date between Qualification No. 1 and Qualification No. 2.

Under the law a person who had graduated from a reputable medical college under a two-year course some years ago has the same standing in law that a medical man has who has graduated from the same college under a four-year course at a later date.

Reciprocity would be a failure if it did not take care of those physicians who have been in practice several years, but who graduated from reputable medical colleges previous to the advance of such colleges to a higher standard. If this principle was not acquiesced in, then men of the very highest standing and experience could not be included in any reciprocal exchange of State certificates, and only very recent graduates could obtain the benefits of reciprocity.

If, for example, it is proper for Michigan to receive and register without examination a recent graduate who has passed his examination before the Illinois board, it also seems proper to recognize the teachers and examiners of such Illinois licentiate without examination. Under the Medical Act of Illinois this cannot be done at present, as it allows only for registration after an examination by a State board. Therefore, Michigan will only be able to reciprocate with Illinois under Qualification No. 1.

Therefore it behooves the profession of Illinois and of other States having like acts to amend their medical laws, which prevent fully 75 per cent. of their reputable practitioners from receiving their just rights.

Any reciprocal legislation which provides for the present and future practitioner, and ignores the older and experienced practitioner, simply for the reason that the latter has not obtained his certificate of registration through a State board examination, is not only incompetent and unjust, but is also unconstitutional legislation.

One of the great hindrances of reciprocal medical legislation, and of the bringing into effect of the proper exchange of licenses by those States having competent reciprocity clauses in their medical acts, is the almost universal idea held by the profession at large that reciprocity under Qualification No. 2 necessarily means the letting down of the legislative bars, and the unrestricted migration from one State to another of the undesirable and incompetent practitioner who has obtained registration in the different States through a re-registration clause of the medical acts.

This is not the case, however, for it will be seen that under Qualification No. 2 only graduates of reputable colleges are included, and it leaves it entirely at the discretion of a board as to whether it shall accept the application or not, even though the applicant may be a graduate of a reputable college.

It has been held by some in the past that it would be unconstitutional in law for a State to accord privileges to one registered physician in a State, and deny them to another registered physician in the same State, but there are numbers of decisions of the Supreme Courts in almost every State upholding the principle that when a qualification is exacted the element of prohibition is eliminated if it is possible to obtain the qualification demanded, and such legislation cannot be held as prohibitive legislation.

Therefore, a State has a right to accept with a qualification a physician registered in a State and to reject another registered physician without a similar qualification, although in possession of a similar State license in the same State. This legal question has been a more or less important factor in the past against reciprocity.

Under Qualification No. 1 the raising of the standard of medical education and its uniformity is assured. The boards entering into reciprocity will not, as has been done by the American College Association, set a course in years, as a "four-year course of six months in each year," which may mean little or no actual work accomplished; but will set the course in hours, itemizing each subject and laboratory course. In other words, in the recognition of standards the fact will be required as well as the form, and every applicant for the exchange of certificate under this qualification must sign, and attest to same under oath on an application blank, in which every item of study, including the laboratory work and demonstrations, is itemized and which represents the standard adopted by the boards in reciprocity.

As this method will promote and assure uniformity and a higher standard in the exchange of certificates under Qualification No. 1, applicable to graduates of medical colleges subsequent to July 1, 1902, it will also promote uniformity and a higher standard in medical colleges, from the fact that graduates, who do not in their course at college take the standard of preliminary and medical education set by the boards holding membership in the American Confederation, can obtain none of the benefits of reciprocity. A medical college in the future must do business to be successful upon the quality of its diploma, and its value as a qualification for State license.

For example, a graduate of a Michigan college could possibly go before the Wisconsin board for examination, and if successful receive the Wisconsin license, but if he did not in his course at the Michigan college obtain a certain standard, he could not, in consequence of having the Wisconsin license, obtained by examination, exchange it with a State in reciprocity with Wisconsin unless the Michigan college came up to a certain standard as agreed upon by the two States in reciprocity.

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It seems to me necessary, if only from a business point of view, for a college to adopt in its curriculum the requirements of those States having the highest standard, otherwise its students or graduates would be at a disadvantage after graduation, and would not be able to take advantage of the reciprocity regulations in some of the better States.

Those States and colleges adopting the most stringent standard will be able to give more to their licentiates and graduates, and it certainly would be an object for both States and colleges to furnish their licentiates and graduates with the highest quality of a license or diploma.

Every college and State board in the United States will be furnished with the minimum standard of medical and preliminary education adopted by reciprocating boards, and, as I stated previously, it is simply a business proposition for a college to meet the requirements of this standard.

A fact that must not be lost sight of is the overwhelming evidence that the great mass of the profession is determined to elevate the standard, and unless the plan of reciprocity conforms with this idea of a higher standard, reciprocity can never be and should not be accomplished.

Three or four State boards uniting means the raising of the standard of every college affected by this union, and if this union means, as it should, only the complete recognition of colleges

of the highest standard, then cheap and inferior schools must go by the board. Union with other boards makes it possible for a State board to throw out its inferior schools, for they would not be recognized by the other States in union, and it would then be comparatively easy for a State board in a State in which they are located not to recognize them in consequence.

Another fact that must be remembered is that reciprocal exchange of certificates between States should only be made upon equal terms, and that no State should give or take a certificate except upon the basis of an equal qualification. Therefore, for a time, at any rate, complete reciprocity between States will not be possible, but a modified reciprocity will surely, in due course of time, bring about complete reciprocity.

An Important Malpractice Decision in Ontario.

Justice Falconbridge, of Toronto, has recently delivered judgment in a malpractice suit which has caused on little interest among the profession in the Province of Ontario. The case was tried recently at the Toronto non-jury sittings and was brought by a woman against two brothers of an Eastern Ontario town who were practising in partnership. The case arose through the dislocation of the astragalus, treatment of which had been interfered with by the patient. The Statute of Limitation in Ontario required that suit be instituted within one year; and the judgment upon this point is particularly interesting to Ontario physicians. The learned judge held that "consulting another surgeon (which the plaintiff had done) in the absence of, and without notice to or leave of the surgeon in charge, is an indication of want of confidence in the latter, and would of course be treated by him, when he came to know of it, as tantamount to a dismissal of him by the patient." The burden of evidence clearly showed that the patient had been properly treated by the defendants; and the case was dismissed against the defendants on all the counts.—Medical News.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I NOVEMBER 1902 No. 2

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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ADVERTISING RATES FURNISHED UPON APPLICATION. Non-ethical advertisements will not be received, the publishers reserving the right to reject and discontinue any advertisement at any time.

Application made for entry to the second class rates of postage at the Fort Wayne Postoffice.

EDITORIAL NOTES

The Physicians Defense Company, on the 9th day of June, 1902, applied to the Secretary of State of the State of Missouri for admission as a foreign corporation, and presented the necessary papers and certified check for the requisite fee. The Company had previously been admitted and received a license from the State Department of Missouri under the name of The Physicians Guarantee Company, but having been reincorporated it sought re-admission under the new name.

The application was denied and the papers were returned by the Secretary of State on the 12th day of July, 1902. The Company again applied for admision, calling the attention of the department to the fact that it had previously been admitted under its old name and requesting a re-consideration of its application. This the department declined to do, and returned the papers with the statement, "I deem it necessary to advise you that this matter is closed so far as this department is concerned." The matter was then placed in the hands of the Company's attorneys in Missouri, with instructions to bring a mandamus proceeding in the Supreme Court of the State to compel the department to accept the Company's application and grant a certificate.

A petition was prepared and filed with the clerk of the Supreme Court, and the notice of the application for the alternative writ being expressly waived by the Secretary of State, the petition was presented to Hon. W. C. Marshall, Judge.

Action on the application was deferred by the Judge upon request of the Secretary of State until the Attorney General could investigate the issue submitted, and if he chose to do so, file a brief in opposition to the application.

The Attorney General, after due deliberation, advised the Secretary of State to accept the application, admit the corporation and issue the proper certificate of authority, as shown by the following letters of the Secretary of State and Hon. William C. Marshall, Judge, to the Company's attorneys:

"September 26, 1902.

"Gentlemen: In re-application of The Physicians Defense Company, a corporation under the laws of Indiana, for license to do business in Missouri:

"As you are aware, this department refused to issue the license for the reason that it appeared from its articles of association that it could not incorporate under the provisions of Article IX., Chapter 12, R. S., 1899; and for the further reasons that the business purposes set out appeared to be against public policy, as the Company was organized for the sole purpose of defending physicians against prosecutions for malpractice. I am now in receipt of the opinion of the Attorney General, in which he holds to the contrary. He says: 'At first appearance, it seems that the object of the Company is, first, contrary to public policy, and second, its business is that of the nature of insurance; but after a thorough examination I find these points not well taken, and that its objects do not fall within the purview of a legal objection.'

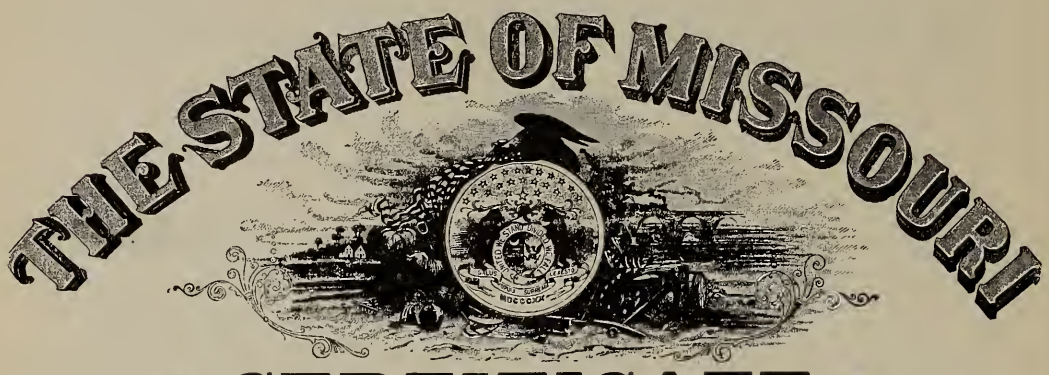
"Therefore, if the application of said Company is made in due form, accompanied with check to cover corporation tax, license and fee, license will be issued.

"Very truly yours, "SAM B. COOK, "Secretary of State."

"September 26, 1902.

"Dear Sir: Enclosed I hand you the petition for a mandamus in the matter of The Physicians Defense Company against Sam B. Cook, Secretary of State. I am advised by the Attorney General's office that upon the advice of that department the Secretary of State has determined to issue the desired license without further delay or litigation. I congratulate upon winning your case so easily. With best wishes, Your friend, W. C. MARSHALL.

The company again presented its application and on the 1st day of October, 1902, received the department's certificate authorizing it, as a foreign corporation, to conduct its business in the State of Missouri. A reproduction of the certificate is hereto attached:



✻ CERTIFICATE ✻

Whereas, the Physicians Defense Company incorporated under the laws of the State of Indiana has filed in the office of the Secretary of State, duly authenticated evidence of its incorporation, as provided by law, and has, in all respects, complied with the requirements of law governing Foreign Private Corporations,

Now, Therefore, I, SAMUEL B. COOK, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said Physicians Defense Company is from the date hereof duly authorized and Licensed to do business in the State of Missouri for a term ending April 15th 1952 and is entitled to all the rights and privileges granted to Foreign Corporations under the laws of this State; and that the amount of the capital stock of said Corporation is One Hundred Thousand Dollars, and the amount of said capital stock represented in the State of Missouri is One Thousand Dollars.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the GREAT SEAL of the State of Missouri

Done at the City of Jefferson, this 1st day of October A. D. Nineteen Hundred and two.

Samuel B. Cook
Secretary of State.

The foregoing correspondence and reproduction of the certificate issued by the State of Missouri has been hereto set forth to off-set the false statements circulated by certain Casualty Companies, to the effect that we were not legally qualified to do business in Missouri, and that those contracts issued to the Medical Profession could not be enforced.

Original copies of the above may be seen in the Company's offices, Nos. 314-315 DeSoto Building, St. Louis, Mo.

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

EMPIRICAL INVENTIONS

Promoted by the United States Patent Office, A Decision of the U. S. Circuit Court of Appeals. Eighth Circuit.

Letters-patent of the United States Government confer on the inventor the right to the exclusive use of his inventions. His right prior to the issuance of the letters-patent is the free use of his invention by himself, subject to its equally free imitation by others. The granting of letters-patent, therefore, does not enlarge his own privileges in its use, but rather restricts or suspends the privileges of other persons, and during the term of the patent bestows on the inventor a true monopoly by vesting in him its whole control.

The authority to grant letters patent, when the required conditions are performed, implies an authority to repeal them whenever it is ascertained that the grant had been improperly conferred.

While Congress is only authorized by the Constitution to secure to inventors their exclusive right, yet it has provided methods for invalidating its own grant when it is discovered that the patentee had no right to retain it. The patent office was created by Congress in order to secure accuracy in the description of the inventions and to fix the limit of rights between the inventors and the public. The department is vested with discretionary powers; it is for it to say whether the inventor is entitled to a patent or no, and from its decision there is no appeal, except to the Court of Appeals of the District of Columbia. After the letters-patent have been granted, however, the department has no control over the invention, either in protecting the inventor's right as a lawful patent or looking to its repeal as illegal. All questions relative to the repeal of patents fall within the jurisdiction of the United States Courts, and the proceedings for

which are regulated by statutes or the general rovisions of the law.

A patent cannot be repealed except where it limits or suspends the right of one of three distinct classes of persons. First, that class who practice the invention in violation of the exclusive privilege conferred, and are thereby liable for compensation to the patentee unless the patent can be shown to be invalid. Second, that class who are prior inventors and whose monopoly is denied by the existence of the invalid patent. The third class is the general public, whose free use of the invention is suspended and whose power to grant a valid patent is impaired by the mistaken issue of the first.

The first class (Infringers) are relieved from liability for compensation by the defeat of the operation of the patent, as against themselves, on the grounds of it being unpatentable or the patentee not being the original inventor.

The second class (Prior Inventors), upon presentation to the department of evidence of prior invention, will be granted letters-patent not on the theory that more than one monopoly of the same article can be created by the public, but as a devise for putting both claimants on an equal footing, before the court, for its determination of their rights.

The third class (The Public), when it is found that an invalid patent, so determined by repeated decisions of the courts, is being used as a mere instrument of oppression against citizens who, though aware of its true character, are put to trouble and expense in defense against it, can in the name of the Government, or its Attorney General, institute proceedings in chancery for a repeal of the patent.

There was issued to one Hercules Sanche, on the 27th day of July 1897, letters-patent No. 587,237, on "a new and improved method of and apparatus for treating diseases, of which the following is a specification:"

> "I have advanced certain new ideas and theories concerning the disturbance of the normal functions of life commonly known as 'disease.' My observation and experience justify the belief that most diseases, and especially those of a nervous character, are due to a disturbance of the electrical equilibrium of the body. It is well known that the earth and the surrounding envelope of air are strongly charged with an opposite polarity, and that any disturbance of the normal relations of these forces, such as occurs before a thunder storm, results in discom-

fort to the whole animal tribe. The habits of civilized life, i. e., the wearing of shoes and clothing of non-conducting material and the insulation from the earth by dry floors and feather beds, prevent the body from partaking freely of the electrical equilibrium of the earth, and a preponderance of an electric tension of either a positive or a negative character in the body produces, by a stimulation or suppression of chemico-vital function, the abnormal condition of things, the symptoms of which we call 'disease.' Hogs in the field, turtles, alligators and the lower animals that lie in the mud and readily partake of or assimilate themselves to the electrical conditions of the earth, are notoriously free from disease and nervousness. Man, the feathered tribe, and higher animals, who are covered with a non-conducting coat and are more or less insulated from the earth are subject to these difficulties in marked contrast. Pursuing this theory, I have undertaken to correct these difficulties, not by an attack upon the symptoms, after the manner of medication, but by the logical process of bringing to bear upon the system a set of influences reverse to those which involved the difficulties. In my first application I only contemplated the restoration of electrical equilibrium by a metallic or conductive contact between the body and the earth. My present application comprehends even a wider scope and a more general application, in that it does not simply comprehend a preservation of electrical equilibrium for this would only seem to preserve health, but it contemplates the removal of abnormal conditions by producing an electrical tension in the body contrary to that which superinduced the disease; and for this purpose I have found that the contact of the body through a small conductor with a source of extraordinary heat or extraordinary cold permits me to produce either a positive or a negative condition in the body without connection with the earth; it being remembered at the outstart that the electrical condition referred to by me has nothing whatever to do with galvanism or dynamic currents, but is only a condition of electric potential or static polarity. This agency permits me to reach all the functions of the body, and bring them into healthy and effective action, stimulating the chemico-vital processes without having to rely upon the single

channel of an enfeebled and diseased stomach, which is almost the only avenue of treatment by medication."

This is followed by a description of the device, which is very simple, being nothing more than two metallic plates, connected by a fine wire. One of these plates is to be placed in contact with the limb or arm of the patient, and the other placed in an ice cooler or on a stove or in the sun. The following additional statements are contained in the specifications:

"It is not pretended that there is any flow of current or any of the phenomena of dynamic electricity manifest in this apparatus, but only a charging of the body with a certain magnetic polarity, the effects of which upon the system are remarkable in stimulating the system to throw off disease. The cold or earth connection I find almost universally applicable to allay nervousness and stimulate the system by counteracting one polarity of the body. The hot connection is for the opposite polarity, such, for instance, as exists in inflammatory fevers; its effect being usually to first raise the temperature, and then bring the body to a normal temperature by dissipating congestion and starting the perspiration. The manner in which I believe the charging of the body with a positive or negative polarity acts upon the system to effect physiological changes is by the exertion of an attractive influence and the stimulating of an endosmose of gases of the air through the capillaries and electrolytic action in the cells, which agencies, by intelligent application, are made to arrest various disorders. I am aware that it is well known to apply to patients the cooling effect of direct contact or radiation of hot bricks, bottles of water, etc., and also to apply directly cooling applications of ice. The application of these is entirely different from my invention, in that I do not employ the direct conduction of cold or heat; nor do I apply it in the same way. I utilize the influence of a cold or hot object at a distance through a conductor of electricity, the source of its influence being removed to a point out of range or direct radiation or conduction of heat. Another important and distinguishing feature of my invention is that the wire connection which I employ does not necessarily have the qualities of a conductor for dynamic electricity where flow or passage of the current increases with the increase of cross-sectional areas of the

conductor, but I find ordinarily that the best effects are produced with a very small copper wire, varying in size from 24 to 30, and when great variations in temperature—i. e., an intense degree of cold or intense degree of heat—are employed, the tendency to best effects is produced by the finer wire, and vice versa. This strengthens my belief that the principle which is made available is not of dynamic character, but only such small wire is required as to permit the polarity in malecules of the wire to induce a corresponding polarity of the body, and to make of the body a feeble magnet of positive or negative polarity, according to the character of the connection (hot or cold) and the nature of the disease. In substantiating by analogy the effect of hot or cold connection upon magnetism in inanimate things, I find by test that a magnet of normal temperature connected at its equator to a body of ice water by a fine wire, will, after a lapse of several days, show a strengthening of its north pole and a weakening of its south pole, the center of magnetism in the south pole moving gradually towards the equator. A magnet similarly connected to a hot body (the heat of a stove) shows precisely the reverse—i. e., a strengthening of the south pole and a weakening of the north pole—and I am led to believe that a similar result takes place in the human body when my invention is applied. It is not absolutely essential that I should employ different temperatures to get the concomitant effects of magnetic polarity. A body of hydrogen gas can be substituted for the cold application and oxygen for the hot application, and the body of the patient may also be given a polarity by connection with the pole of a permanent or electro magnet."

This most wonderful invention must have met with a ready sale, for shortly afterwards the market was flooded with imitations. Printer's ink was used lavishly to herald the more extravagant claims of cures and virtues of "the electropoise," "oxygenor king," "oxydonor victory," etc. The assignee of the original letters-patent, the Animarium Company, believing that their preserves were being invaded, brought suit in the United States Circuit Court for the Southern District of Iowa to restrain the Oxygenor Company from infringing letters-patent Nos. 587,237, 587,612 and 588,483. A decree sustaining the validity of the

patents was entered in favor of the plaintiff. From this decree the defendants appealed.

The Circuit Court of Appeals, Eighth Circuit, October 21, 1901, says:

> "The appellants contend in this court, as they did in the lower court, that patent No. 587,237 is void on its face, for the reason that the specification pretends to describe in scientific terms the theory upon which the patented device operates, whereas, as they aver, the terms employed are unscientific, ambiguous and false as statements of scientific truths, and were intended only to mystify the officials of the patent office and to mislead the public. If this charge is true, it doubtless renders the patent void, and its truth or falsity must be determined in the main by a critical analysis of the specifications, since the record contains no other evidence to which we can refer. Turning to the specification and translating it as we understand it, it contains in substance the following representations or statements: The inventor of the device believes (such belief being based on his observation) 'that most diseases, and especially those of a nervous character, are due to a disturbance of the electrical equilibrium of the body;' that the habits of civilized life, particularly modes of dress, prevent the body from partaking freely, as it ought to partake, of the electrical equilibrium of the earth, in consequence whereof the body becomes charged at times either with too much positive or to much negative electricity, the result being an over-stimulation or a suppression of the vital functions, producing an abnormal condition termed 'disease.' This is the new fact or principle which the inventor thinks he has discovered and seeks to utilize in the treatment of diseases. Having adopted this theory of the origin of all or most diseases, he represents that he has had in contemplation the removal of the abnormal condition aforesaid, which end he proposes to accomplish by producing an electrical condition of the body contrary to that which occasioned the disease; and the means that he employs to that end, which is the only patentable subject, is a small wire with metallic pads at the end, designed to connect the human body with some other object which is either very hot or very cold, and so far

removed as to avoid the effects of radiation. The inventor recommends a hot connection to allay inflammation, and a cold connection to allay nervousness; but he makes no recommendation as to the sort of connection which should be made to cure hundreds of diseases that are well known to the medical profession, leaving those who may be afflicted with such diseases to find out the proper connection for themselves. Concerning the manner in which the alleged alteration of the polarity of a human body by means of the wire connection operates to cure disease, the inventor says that he believes that it operates by 'the stimulating of an endosmose of gases of the air through the capillaries and electrolytic action in the cells, which agencies by intelligent application are made to arrest various disorders.' This explanation is not very lucid, but as the word 'endosmose' means 'a thrusting inward,' and as it is a word frequently employed in physiology to describe the absorption of the fluids of the stomach into the blood vessels by capillary attraction, and as 'electrolytic action' means the decomposition of substances occasioned by electricity, the paragraph above quoted must be understood to mean that the inventor believes that his device operates to cure disease by causing an increased flow of the gases of the air through the capillaries or ducts of the human body, and by causing a more rapid decomposition in the cells of the body, due to the action of an increased current of electricity. Now, as no one knows in what way electricity when applied to the human body operates to cure disease, or whether it does effect cures, it is obvious that any physician who employs electricity as a healing agent by means of an ordinary battery might give the very same explanation of its operation as that given by the patentee, and with full as much assurance that his explanation was right. A further criticism of the clause of the specification last quoted is that, while the inventor suggests that an intelligent application' of his device must be made to arrest various disorders, yet he nowhere points out how it should be applied to cure any specific disease which flesh is heir to. If one has a headache, or a cold, or consumption, or a cancer, or Bright's disease, or any severe pain, all of which diseases, according to the

inventor's theory, are due to a disturbance of the electrical equilibrium of the body or to a loss of one species of polarity, he could not determine from anything contained in the specification how the device should be applied, or with what exterior object he should become specially connected, to regain a proper electrical equilibrium of the requisite electrical polarity. Again, in two places in the specification the inventor says, in substance, that his invention has naught to do with 'galvanism or dynamic currents,' and that he does not pretend that there is a flow of any electrical current along the wire, from which we understand that he means to assert, without any proof whatever, that the connection of two bodies of a different temperature and of a different polarity by a copper wire does not generate an electric current. There are other statements, however, contained in the specification, such as the statements, in substance, that the wire 'makes of the body a feeble magnet of positive or negative polarity,' according to the connection; that he utilizes 'a conductor of electricity' to communicate the influence of a hot or cold object to the human body, and that the body may be given the desired polarity by connecting it by means of the wire with an electro-magnet, all of which seems to be inconsistent with the aforesaid assertions of the inventor, and to have been intended to create the impression in the minds of ordinary persons that current of electricity such as they are familiar with is generated by this device, and that he makes use of it for healing purposes.

"We are of the opinion that the patented device, considered by itself, and apart from the force, if any, that is thereby utilized, contains no features of novelty entitling it to a patent; it being nothing more than a wire connecting two metal pads. We are furthermore of opinion that if what is ordinarily termed an 'electric current' is generated or occasioned by the attachment of the wire to two objects of a different temperature or different polarity, and if the curative effect of the device when applied to a patent is due to a slight electric force or energy thereby generated, then the device is wanting in patentable novelty. It seems most probable that, if it exerts any curative power, it is due to the cause last sug-

gested. It is within the common knowledge of everybody that electric energy has long been used in the treatment of various diseases, and that when so employed it is conveyed from the source of generation to the patient by means of a wire, and is applied in various ways—generally by bringing the end of the wire in contact with the affected part. There is nothing new in the idea of using electric energy to heal disease, although it may not be well enough proven to be accepted as an established scientific truth that electricity does effect cures. The inventor himself seems to have realized the truth of the foregoing observations, and we feel constrained to believe that he made the several assertions heretofore mentioned (that he did not employ dynamic currents, and that there was no flow of current) upon the assumption that if a current of electricity was developed by his device, or by his mode of applying it, its healing effect, if any, was most likely due to the slight electric current thus developed, and that in that event he would not be entitled to a patent. We have been forced to conclude, after a careful study of the specification, that the theory enunciated by the inventor, that most diseases are 'due to a disturbance of the electrical equilibrium of the body,' is a mere pretense; that is to say, a theory not entertained by the inventor in good faith, but put forth as an imaginary hypothesis merely for the purpose of obtaining a patent on a very simple contrivance, which was not patentable unless the claim was re-enforced by some such pretended discovery. The theory or discovery in question is certainly at war with at least one of the accepted truths of medical science of which we are entitled to take notice, namely, that many diseases are occasioned by germs or microbes that are taken into the system, either in the food which we eat, or the water which we drink, or in other ways, and whose operations in some instances have been observed and studied by the microscopist.

(Concluded in December issue.)

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DECEMBER 1902

MEDICO-LEGAL BULLETIN.

Vol. I No. 3

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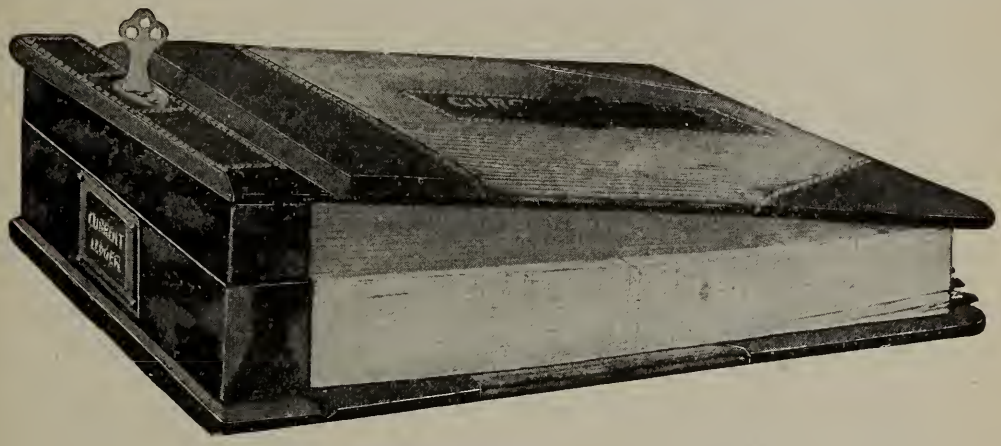

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Fort Wayne, Indiana

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If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

Date.....190... (Applicant's Signature).....

* Cross out professions not practiced.

Received H. O. *Issued*

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CAPITAL STOCK
$100,000.00

NUMBER

INCORPORATED UNDER THE LAWS OF INDIANA.

The Physicians Defense COMPANY

ELEKTRON BUILDING

FORT WAYNE, INDIANA.

In Consideration of the written and printed application which is hereby made a part of this contract, and the sum of Twenty Dollars, receipt of which is hereby acknowledged, being the consideration for one year's defense, and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract

THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expense of defending such suits not exceeding **FIVE THOUSAND DOLLARS** *in defense of any one suit, nor exceeding in the aggregate* **TEN THOUSAND DOLLARS** *in defense of suits based on services rendered within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated, to-wit:—*

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__.

A. F. Buchman.

President.

_____

Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

Malpractice Defined.

In legal text books malpractice is defined as bad or unskillful practice in a physician whereby the health of the patient is injured or death ensues. By law it is divided into two general classes—civil malpractice, for which damages may be recovered by a civil action, brought in the name of the person injured, or claimed to have been injured, by the physician's treatment, and criminal malpractice, for which criminal action is brought in the name of the state or relative of the person alleged to have been injured, and which injury was a violation of the law and punishable by fine and imprisonment. It is possible in certain cases for a civil and a criminal action to be both brought against a physician for the same cause, as in the case of an abortion without the consent of the patient. In such case a criminal action will lie for violation of law and a civil action for damages to the health of the patient.

Malpractice actions, both criminal and civil, are the outgrowth of a breach of contract, although suit may be brought in tort as well as in contract. In fact, it is customary to allege both in the complaint and often they are so interblended that it is impossible to tell where contract leaves off and tort begins, the contract being alleged as mere inducement to the tort, which is the real gist of the action.

A contract is an agreement, expressed or implied, upon sufficient consideration to do or not to do a particular thing. An expressed contract is one in which the particulars of the agreement are averred and mutually agreed upon. An implied contract is one where no particular terms are set forth. In such case the law will taken into consideration the relation of the parties, and will by implication create for them such an agreement as reason and justice would dictate.

Whenever a physician or surgeon accepts a case or undertakes the treatment of, or agrees to operate on any patient, a contract is created between them in which each impliedly agrees to do certain things.

A physician or surgeon impliedly contracts that he has such skill, science and information as will enable him properly and judiciously to perform the duties of his profession.

> "One who holds himself out as a surgeon impliedly contracts with every one who employs him that he has ordinary knowledge and skill in his profession."—Tish v. Welker, 7 Ohio N. P., 472.

This is a contract created by law, irrespective of any statutes relative to the qualifications for practice, although the question of the degree of the knowledge and skill which the physician is required to possess is as a rule left to judicial consideration in each particular case. The reasonable and ordinary skill and knowledge which the law requires of physicians and surgeons is such as physicians and surgeons in the same general neighborhood in the same general line of practice ordinarily have and exercise in like cases. In Shear & Redf. Neg., Sec. 436, it is said that "the standard of skill may vary according to circumstances, and may be different even in the same state or country. In country towns, and in unsettled portions of the country remote from cities, physicians, though well informed in theory, are but seldom called upon to perform difficult operations in surgery, and do not enjoy the greater opportunities of daily observation and practice which large cities afford. It would be unreasonable to exact from one in such circumstances that high degree of skill which an extensive and constant practice in hospitals or large cities would imply a physician to be possessed of. It seems to us that physicians or surgeons, practicing in small towns, or rural or sparsely populated districts, are bound to possess and exercise at least the average degree of skill possessed and exercised by the profession in such localities generally. It will not do, as we think, to say that if a surgeon or physician has exercised such a degree of skill as is ordinarily exercised in the particular locality in which he practices, it will be sufficient. There might be but few practicing in the given locality, all of whom might be quacks, ignorant pretenders to knowledge not possessed by them, and it would not do to say that, because one possessed and exercised as much skill as the others, he could not be chargeable with the want of reasonable skill."

A physician or surgeon impliedly contracts to use reasonable and ordinary care and diligence in applying his knowledge and

exercising his skill. A physician of extraordinary skill and superior learning might in examining a patient in a hasty or careless manner fail to observe symptoms, and thus on account of wrong diagnosis not only not benefit the patient, but cause him injury.

> "He was liable for damages arising as well from the want, as for the want of application, of skill. It is a party's own fault if he undertakes without having sufficient skill, or if he applies less than the occasion reuires."

A physician or surgeon impliedly contracts that he will use a reasonable degree of skill and knowledge in the treatment of the patient. There can be prescribed no absolute rule to determine what is ordinary care and diligence or a reasonable degree of skill. Different things may require very different care, as said by Story, on Bailments: "The care required to build a common doorway is quite different from that required to raise a marble pillar, but both will come under the description, ordinary care."

> "A physician is required to exercise that degree of knowledge which physicians practicing in similar localities ordinarily possess, and not merely the knowledge possessed by physicians practicing in his own locality."—Whitsell vs. Hill, 70 N. W., 750.

A physician or surgeon impliedly contracts that he will exercise due care and diligence in attending and treating the patient. He may elect whether or no he will accept the case and undertake its treatment, and cannot be held responsible for refusing to do so.

> "A physician licensed to practice medicine is not liable for arbitrarily refusing to respond to a call, though he is the only physician available."—Hurley v. Eddingfield, 59 N. E., 1058.

Having accepted the case he impliedly contracts that as long as his services are needed they will be rendered, and they cannot be terminated on his part, iwthout liability, except by giving due notice, and allowing sufficient time in which to obtain the services of another physician. The physician, however, can be discharged by the patient at any time without notice. The physician or surgeon is under an implied obligation to give proper and necessary instructions to the patient or his attendants, in order that they may intelligently co-operate in the treatment. This the law encourages, and it will hold the practitioner accountable for failure to so instruct, should injury result from such failure, as was well said:

"Even if defendants have exercised proper care and used proper skill in all things, yet if they omitted to give plaintiff proper instructions for the care and use of his wounded leg, they are rightly held liable."—Beck vs. German Klinik, 78 Ia., 696; 43 N. W., 617.

It is for the physician to decide as to the number and frequency of his visits, and he must exercise ordinary care and skill in determining the same.

"A physician (being the proper judge of the necessary frequency of his visits so long as he is in charge of a patient), in an action for his services, is not required to prove the necessity of making the number of visits for which he seeks compensation."—Ebner v. Mackey, 57 N. E., 834.

That a physician or surgeon will be held to a strict accountability for negligence, inattention and abandonment of a patient is clearly shown by the following cases:

"A physician employed to attend a patient having a fractured arm, who properly sets and re-sets it, and states at the latter time that he is going on his vacation, and will be gone ten days or two weeks, and directs the patient to keep the arm in a sling, is liable for malpractice in remaining away for five weeks, the arm having slipped in the meantime, and become permanently united at a place, giving a permanent injury."—Gerken v. Plimpton, 70 N. Y. S., 793.

"When a physician is employed to attend upon a sick person, his employment continues while the sickness and the relation of physician and patient continue, unless it is put an end to by the assent of the parties or is revoked by the express dismissal of the physician."—Lawson v. Conaway, 16 S. E. (W. Va.,) 564.

A physician or surgeon impliedly contracts to follow the established modes of practice. These are to be judged by the school of medicine which he professes to practice. The law does not recognize any particular school or system of methods, and the question of the exercise of the required skill, knowledge and diligence in the treatment of the case will be decided by the general rules and principles of the particular school of medicine which he follows.

"If the defendant adopted the treatment laid down by his own school, the fact that another school prescribed another treatment tended in no wise to show that

the defendant was chargeable with lack of skill or negligence."—Force v. Gregory, 63 Conn., 167.

He is required to keep abreast with the times and make use of the latest and most improved methods and appliances, having regard to the locality and practice of the profession, and it is for the jury to decide from the particular circumstances whether he has fulfilled his duty in this respect. The law will, however, hold a physician or surgeon to a strict accountability should untoward results occur from the use of new and untried remedies or procedures. These, in the eyes of the law, would be experiments, and whether their use was justifiable or not would be a question for careful consideration on the part of the jury. The use of the X-ray in the treatment of disease is a case in point. Experience has shown that its effects are very uncertain. A strength of ray and length of exposure which produce beneficial results in one patient, in another may result in severe burn and injury. No court of last resort has as yet passed upon the question whether the use of the X-ray is within the scope of medical treatment or not, and a decision upon this point is anxiously awaited.

The physician or surgeon impliedly contracts to use his best judgment. This does not mean that his judgment shall be infallible, but that in all cases of doubt he will fully exercise what shall be reasonably good judgment. The exercise of best judgment is called into play in those cases where the physician or surgeon is unable to determine the patient's condition or ailment, and where he is requested by the patient to follow a certain course of treatment, or to perform a certain operation, which, in his opinion, is unnecessary, unwise, or which will result injuriously. It is his duty in a case of this kind to give the patient the benefit of his best judgment, whether it is asked or not, and should he fail to do so, he will be held liable for the damages that may accrue. On the other hand, if his advice is not followed, and if the patient is of mature years and of sound mind, even though the physician performed the services requested, he cannot be held accountable for any unfortunate results.

> "If a surgeon, when called upon, advises the patient, who is of mature years and sound mind, that the operation is unneccessary and improper—in short, advises against the performance—and the patient still insists upon the performance of the operation, in compliance with wnich the surgeon performs it, we do not see upon what principle the surgeon can be held responsible to the patient for damages, on the ground that the opera-

tion was improper and injurious. In such case, the patient relies upon his own judgment, and not upon that of the surgeon, as to the propriety of the operation; and he cannot complain of an operation performed at his own instance and upon his own judgment, and not upon that of the surgeon."—56 Indiana, 497.

Further, the degree of liability to which the physician or surgeon is held is not varied by reason of the fact that he is performing his services gratuitously. The law requires of him just as much skill and care and diligence and judgment in treating a penniless patient as it does when he treats a wealthy man. In McCanless vs. McWha, 22 Pa. St., 261, it was said, "This rule (of ordinary skill, care and diligence) applies even though the services are gratuitously undertaken."

The medical profession is branching out into specialties just as other professions. The law holds all medical specialists to a degree of liability commensurate with the peculiar opportunities for possessing and using skill and care. The specialist is held to that degree of care, skill and knowledge ordinarily possessed by practitioners devoting special attention and study to the same branch. His skill is not measured by that possessed and displayed by the profession generally, but by those physicians who are specialists in his line. In Feeny vs. Spalding, 89 M., 111, and McMurdock vs. Kimberlin, 23 Mo. App., 523, this point is well settled.

Therefore a physician or surgeon is liable to be sued for malpractice in treating a patient:

(1) When he does not possess ordinary skill, science and information; or

(2) When he does not use reasonable and ordinary care and diligence in applying his knowledge and exercising his skill; or,

(3) When he does not use a reasonable and ordinary degree of skill and knowledge in treating the patient; or,

(4) When he does not exercise ordinary care and diligence in attending and treating the patient; or,

(5) When he fails to give proper instructions to the patient as to the care of himself; or,

(6) When he fails to use ordinary care and diligence in determining the frequency of his visits and the cessation of the same; or,

(7) When he fails to follow the established modes of practice of his particular school and the advancement in it and injury results to the patient.

And all this whether or not he is to receive compensation.

The law construes an implied contract on the part of the patient, as well as on the part of the physician, based upon and growing out of their relations to each other.

The patient impliedly contracts to pay the physician's fees. As a general rule, it may be laid down that a patient is bound to pay reasonable fees for services of a physician, he having availed himself of the benefit of the latter's services.

> "Where the services of a physician are performed on request, and no agreement is made in respect to them, the law raises an implied promise to pay so much as the person performing the services reasonably deserves to have, and upon such implied undertaking an action will lie."—Starrett v. Miley, 79 Ill. App., 658.

The right of recovery, from the patient, rests with the physician for services rendered the former, although he may not have called the physician in attendance. The fact of his having accepted the services, the law will presume him to have promised an adequate compensation.—Crane v. Bandonine, 55 N. Y., 256.

The contract to pay is not conditional upon the results accrued to the patient, and the physician can recover for his services.

> "A physician is entitled to pay for his services whether he succeeds in curing his patient or not, provided he uses the skill of an ordinarily skillful physician."—Yunker v. Marshall, 65 Ill. App., 667.

Even after an expressed contract has been entered into, wherein is stated the amount to be paid by the patient for services to be rendered on the part of the physician, if the latter, upon further examination, finds that it will require more extended treatment or more difficult operation, and so explains to the patient, although nothing may be said relative to additional fees, yet they can be recovered by law.

> "A surgeon agreed with defendant to perform an operation, which was not dangerous, for the wife of the latter, for $75, but on a future examination he found that an entirely different and more difficult operation was required. He disclosed such facts to defendant, but nothing was said about a change in the agreed compensation. With the attendance of four physicians and six nurses, an operation severe in character and two and one-half hours in duration, and which required the knife, was performed, and was followed by many daily visits. Held, that the evidence was sufficient to sustain a verdict for a sum in excess of the amount named in the agree-

ment made after the first examination."—Judgment and order, 57 N. Y. S., 817, affirmed.—MacEvitt v. Maass, 72 N. Y. S., 158, 64 App. Dic., 382.

The implied contract between the physician and patient is one of the few which the law considers legal, and will enforce when entered into on Sunday.

"A physician may recover compensation for visits paid and charges incurred on Sunday."—In re Staggers' Estate, 8 Pa., Super. Ct., 260, 43 W. N. C., 79; Appeal of Downey, Id.

If the patient receiving the services of the physician is himself an active medical practitioner, residing in the locality, then the implied promise to pay for the services is off-set by the ethics of the profession.

"Evidence that the ethics of the medical profession forbid physicians from charging each other for services, and that it was the custom of physicians in a particular locality not to charge for such service, is admissible to negative an implied promise of one physician to pay for services rendered by another."—Bremerman v. Hayes, 9 Pa., Super. Ct., 8.

The implied promise of the patient to pay also includes the fees of those consultants who may be brought into the case.

The patient impliedly contracts that he will be obedient to the instructions, and will adopt the remedies of the physician. That it is the duty of the patient to carry out the instructions of his medical attendant is a well-settled proposition of law, and any injury which may result from his refusal to comply with, or from disregard of instructions, will prevent a recovery for damages from the physician.

"If a patient, by refusing to adopt the remedies or comply with the directions of the physician, frustrates or defeats the endeavors of the physician, or if he aggravates the case by his misconduct, he can not charge to the physician the consequences due distinctly to himself. (Whart, Neg., Sec. 737.) A party seeking to recover for an injury must not have contributed to it in any degree, either by his negligence or the disregard of a duty imposed upon him by his physician, who, by his negligence, or want of care or skill, may also, in some degree, have contributed to the injury. (Geiselman v. Scott, supra.) If the contributory negligence of the patient united in producing the injuries complained of, the physician is not liable for damages therefor."—Potter v. Warner, supra.

The Physicians Defense Company Legally Qualified in State of Pennsylvania.

The Physicians Guarantee Company, early in 1900, previous to seeking admission to do business in the State of Pennsylvania, presented to the Insurance Department at Harrisburg a certified copy of its Articles of Association, and a copy of the contract it proposed to issue for the defense of physicians, surgeons and dentists in civil malpractice actions. Its chief counsel, R. S. Taylor, received from the Department a letter containing the following statements: "Replying further to yours of * * * * permit me to say that I have carefully examined the Articles of Association and contract issued by The Physicians Guarantee Company, and am of the opinion that it is not an insurance company, and does not transact the business of insurance within the meaning of the laws of Pennsylvania, and therefore would not be required to come under the supervision of this Department. Yours respectfully, Israel W. Durham, Commissioner of Insurance."

The Company, upon receiving this ruling, presented its papers to the State Department of Pennsylvania, and requested admission as a foreign corporation, which was granted, and a certificate issued.

The Physicians Guarantee Company, in 1902, having been re-incorporated under the name of The Physicians Defense Company, again presented its papers to the State Department and received its certificate on the ninth day of August, 1902, qualifying the Company to do business in Pennsylvania as a foreign corporation. (See page 81.)

There is not now, nor has there ever been, any question between the State of Pennsylvania and The Physicians Defense Company relative to its right to issue contracts for the protection of physicians, surgeons and dentists in civil malpractice suits. It having been brought to the attention of this Company that certain Casualty companies were mailing to the medical profession of Pennsylvania a copy of a letter purporting as emanating from the insurance commissioner's office, and intimating that this Company had no right to do business in Pennsylvania, the matter was taken up with the Department at Harrisburg.

The following are re-productions of two letters written by the insurance commissioner and his deputy at Harrisburg, October 16 and 17, 1902:

Pennsylvania
Insurance Department
ISRAEL W. DURHAM, COMMISSIONER
Harrisburg Oct. 17, 1902.

The Physicians Defense Company,
FORT WAYNE, Indiana.

Gentlemen:—

In view of any injustice which may have been done THE PHYSICIANS GUARANTEE COMPANY, of Fort Wayne, Indiana, on account of a letter emanating from this department, as of December 23rd, 1901, I beg to enclose herewith copy of an opinion which has been given this Company under date of October 13th, 1902, confirming their right to do business in Pennsylvania.

Respectfully,
Samuel McCulloch
Deputy Insurance Commissioner.

Pennsylvania
Insurance Department,
ISRAEL W. DURHAM, COMMISSIONER
Harrisburg— October 16th 1902.

Dr. A. P. Buchman,
Physicians Defense Company,
Fort Wayne, Indiana.

Dear Sir:-

Since rendering the opinion of Dec.23, 1901, in reference to the business of the Physicians Guarantee Company (now The Physicians Defense Company) of Fort Wayne, Indiana, as being that pertaining to Insurance, I have carefully and very fully re-examined your contract, and am now clearly of the opinion that there is no insurance feature whatever embodied in this contract and your company having been properly registered in the office of the Secretary of the Commonwealth and his certificate having been obtained, you are entitled to issue these contracts in Pennsylvania without being subject to the Insurance Laws or under the supervision of this Department.

Respectfully,
Israel W. Durham
Insurance Commissioner.

From the foregoing it can plainly be seen that representatives of the Casualty Companies who are attempting to foster on the medical profession what is termed a Physician's Liability Policy, have undertaken what, in the mildest of language, would be termed non-ethical business methods. When the Physicians Defense Company first opened its office in Philadelphia, its representative found that there were in the possession of the medical profession a number of casualty policies. It was not a difficult matter to demonstrate the superiority of the defense contract over the liability policy, with the result that many of the latter were cancelled and surrendered. To offset this loss of business, various reports were circulated relative to the Physicians Defense Company, which, like the one under discussion, have all been proven not only false, but baseless.

STATE OF PENNSYLVANIA.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH.

To all to whom these Presents shall come, Greeting:

It is Hereby Certified, That on the ninth day of August A. D. 1902, in pursuance of an Act of the General Assembly of the Commonwealth of Pennsylvania, approved April 22d, A. D. 1874, entitled "An Act to prohibit Foreign Corporations from doing business in Pennsylvania without having known places of business and authorized agents,"

PHYSICIANS DEFENSE COMPANY

a Foreign Corporation, filed in the office of the Secretary of the Commonwealth, a certificate under the seal of said Corporation, signed by the Secretary thereof, stating:

That it is incorporated under the laws of the State of Indiana, with its principal office at Fort Wayne, Indiana.

That its object is to aid the medical profession in the practice of medicine and surgery, by the defense of physicians and surgeons, against civil prosecutions for mal-practice.

That its office in the Commonwealth of Pennsylvania is located at 1410 Real Estate Trust Building, Philadelphia.

That its authorized agent in charge of its business in said Commonwealth is H. H. Marble.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Commonwealth to be affixed the day and year above written.

Secretary of the Commonwealth.

Original Certificate may be seen in the Company's office, 510 Real Estate Trust Building, Philadelphia, Pa. H. H. Marble, General Agent.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

AMERICAN MEDICAL GRADUATES BARRED IN AUSTRALIA.

Australia recently passed medical laws which admit to practice only such physicians as have taken a five years' course in medicine previous to receiving their degree. As the term of the American colleges is much less than this, their graduates are barred.

The Chinese Penal Code provides that if death results as the consequence of administering drugs or the use of instruments contrary to established rules and practice, and if, upon investigation, the magistrate shall find that only an error can be charged, the physician or surgeon can obtain relief from the penalties inflicted for homicide, but that he shall forever be debarred from again engaging in the practice of his profession.

The New York State Nurses' Association requests the enactment of laws by the Legislature which will prevent an incompetent from claiming to be a trained nurse, and which will thus protect the public from an imposition lately practiced to a large extent by probationers donning the uniform.

It is generally conceded that in a majority of the states a corporation cannot be organized or chartered to do a professional business. This applies as well to the medical as to the legal profession. A recent decision in a case appealed from a justice court in Omaha, Neb., is of interest to the profession. The State Electro Medical Institute brought suit against one L. N. Platner for services and recovered a judgment for the amount in a justice court. The case was appealed and the finding reversed, because, in the words of the court, "As a corporation cannot practice medicine under the state laws, it cannot collect for its services."

INTERNATIONAL LEPER LAW.

According to the Semaine Medicale, Germany, Prussia, Roumania, Russia and Turkey have conjointly adopted laws for the purpose of preventing lepers from going from one of these countries to another. Passports and naturalization papers are denied lepers by these governments.—Philadelphia Medical Journal.

RENEWAL OF PRESCRIPTION BY DRUGGIST.

The ownership of a prescription and the right of a druggist to refill the same without an order from the physician is a question which has been largely discussed by the medical profession. We have been unable to find a decision in this country on the question. In a German court a druggist was recently fined $50 and his assistant $14 for having dispensed, a prescription written by a physician, and refilled the same about two thousand times for the same purchaser. The court held that "they should have consulted with the physician before dispensing the same prescription an unusual number of times."

CHRISTIAN SCIENCE HELD RESPONSIBLE.

A death through Christian Science negligence occurred in Toronto within the past two weeks, and as an evidence of the healthy state of the public mind towards the peculiar doctrines of these people, the coroner's jury returned a verdict worthy of more than an ordinary notice: "That the said—boy—came to his death on Tuesday, August 13th, from diphtheria, and we find that ....., the father of the deceased showed culpable criminal negligence in not providing medical assistance, medicine, nursing and comforts, and that ....., the Christian Science demonstrator, was an accessory after the fact, inasmuch as he undertook to advise and treat a dangerous contagious disease, which he admitted he was totally ignorant of. The teaching of the sect known as the Christian Scientists, as brought out in the evidence, is a danger to the community, and the jury would recommend that the law should make it a criminal offence for a demonstrator of this peculiar sect to attend or treat a case which is not being attended by a duly qualified practitioner."—Philadelphia Medical Journal.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I DECEMBER 1902 No. 3

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

$1.00 Per Annum SUBSCRIPTION RATES **Single Copies 15c**

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EDITORIAL NOTES

Through an error of the proof reader, credit was not given to the Medical Record for an article appearing in our November issue, and the author's name was mis-spelled. The article in question was "Medical Reciprocity," and the author's name should have been B. D. Harison, M. D.

AN ENGLISH MALPRACT CE SUIT.

The case of the English physician, Dr. W. T. Law, who has recently had to defend himself in an action brought against him for malpractice, is of particular interest to the whole medical profession. Dr. Law was successful in his defense, but, of course, was put to a very great expense. The annoyance and anxiety of defending such a suit must also have been great. Some of Dr. Law's friends, at the initiative of Dr. Paramore, raised a fund to defray his pecuniary expenses, and this fund was handed over to him at a meeting held for that purpose, under the presidency of Sir William S. Church. The chairman delivered a congratulatory address to Dr. Law, and Dr. Paramore alluded to the brilliant results of a subscription list, which amounted to $3,500. Altogether this is a most gratifying spectacle, and might serve as an example all the world over. A better way yet, probably,

would be for all physicians to join in some insurance scheme against such suits for malpractice; but so long as doctors remain uninsured, and are subject to such gross attacks, it is gratifying to know that there is enough esprit du corps abroad in the profession to lead physicians to stand up for one of their number when he has unrighteously been put upon his defense.

The above article, taken from a recent number of the Philadelphia Medical Journal, has been extensively copied by both the medical and lay press, and while the action must be gratifying to the profession and especially to Dr. Law, still it must be, when considered from a practical view point, inadequate for the profession at large. In this country many of the leading members of the profession have ever been ready to expend their time and money rallying to the support of competent physicians when charged with alleged malpractice. A prominent physician of the northwest, writing on this subject, says: "I have expended in the aid of my professional friends sufficient time and money, which, if multiplied by the number of our profession, would have paid double for all the malpractice suits in the country:" The trouble is that the burden falls on the few, and is not equitably distributed.

In the year 1885 there was incorporated in England, with the "Registered Office," open in London, "The Medical Defense Union," for the purpose of defending its members when prosecuted for malpractice. This organization is saparate and distinct from the British Medical Association, although membership in the latter is requisite in joining the Union. Membership in the Union is by resolution of the "Counsel," the governing body, accepting the application. Each member pays an annual fee and must guarantee an amount which he will pay as an assessment if the circumstances should require. Dr. Law could have availed himself of the benefit of membership in the Union, but failingto do so, we can see no reason other than "esprit du corps" for a subscription in his behalf. There are probably many hundreds as worthy and reputable medical practitioners in England, who have alone and at great expense successfully defended malpractice suits. Our contention is that this class of assistance is not practical, as it cannot be made available for the entire profession. The same conditions confront the profession in America as in Europe. Many of the leading practitioners have contributed without stint of their time and money, assisting their medical colleagues to defeat blackmail under the guise of alleged malpractice. It is a well known fact to observing physicians and attorneys that

actions alleging negligence, incompetency and unskillfulness on the part of a medical attendant are rapidly increasing in number; also that they are, as a rule, unjust and speculative.

In order to put it within the power of every physician to provide himself, at small cost, with the means of making a successful defense in actions of this character, the Physicians Defense Company was organized, by men prominent in the medical and legal professions. The company is chartered under a special clause of the Indiana statutes, the like of which is provided in no other state. This law was passed as the direct result of the efforts of physicians not in any manner connected with the Company except as contract holders. The Company's affairs are managed by a board, many of whom are well and favorably known physicians. The Company has no other business; it attempts nothing but the defense of its contract-holders when charged with negligence, incompetency and unskillfulness—malpractice.

It has been in successful operation over three years, and during which time it has been called upon to render its services to hundreds of its patrons. It has never compromised a case, nor has it ever been unsuccessful in protecting its contract-holders.

The company desires to unite under its banner, "Prophylactic in Alleged Malpractice," all reputable members of the medical profession. "To the end," in the words of Dr. Nicholas Senn, "that the defense be made impregnable by their united support." Will you not join in this commendable work, and by your membership and influence assist the Physicians Defense Company in putting it beyond the power of unscrupulous attorneys and malignant patients to ever again secure a verdict against a reputable physician for alleged malpractice? Fill out the application blank on page 69, mail it with your check for twenty dollars to the Physicians Defense Company. Do it today, and by return mail you will receive the contract for Defense; then you can say with Dr. J. E. Summers, Jr.: "Peace of mind and security from financial loss and incidental worry over damage suits are done away with by the possession of one of your contracts."

A MALPRACTICE SUIT NON-PROSS'ED.

Recently a malpractice suit was brought in Cumberland against Dr. Edwin B. Claybrook by a young woman who had been operated upon for cystic tumor. Malpractice was alleged in the operation and damages asked to the amount of $5,000. The case was non-pross'ed October 23d.

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

SUPREME COURT REFUSES TO LEGALIZE MAGNETIC HEALING.

The Indiana Supreme Court has again held the act of the Legislature defining what constitutes the practice of medicine and requiring physicians' licenses valid. The act was attacked on the ground that it was unconstitutional, because it did not define the practice of magnetic healing as part of a physician's medical practice. The question was raised by G. P. Parks, of Lawrence County, a magnetic healer. The court, which was unanimous, said there was no purpose in the law to discriminate against any class of or particular school of practitioners. Healing of the kind Parks pretended to do was a mere manifestation of magnetic phenomena, if anything, and not to be considered as the practice of medicine. Continuing, the court said:

"It may have been the judgment of the Legislature in its implied exclusion of appellant that both the limitations of value that the allotment possessed and the dangers attending it made it wise to confine its use to a body of men in whose hands it would be safer to intrust it because of their education in subjects relevant to its administration.

"The Legislature in judging of a matter of this kind was authorized to give heed to the opinions of scientific men, and, presuming that it did so, it doubtless found substantial reason for the act of exclusion complained of.

"Judged by such authority, it appears that while the practice of magnetic healing is based on some elements of ascertained knowledge, yet that its prosecution is attended with danger to such a degree that the Legislature was justified in its effort to take it out of the hands of empirics."

The State Medical Board will doubtless use this decision as a basis for prosecuting "professors" who have no licenses, perhaps practitioners of Christian Science healing, throughout the State.

EMPIRACAL INVENTIONS

Promoted by the United States Patent Office—A Decision of the U. S. Circuit Court of Appeals. Eighth Circuit.

[CONTINUED FROM NOVEMBER NUMBER]

We also conclude that the statement in the specification to which allusion has already been made to the effect that the inventor does not by means of his device make use of 'dynamic currents,' but relies on some other mysterious and unexplained property of electricity to effect cures, is a statement which rests upon no substantial foundation, and was most likely inserted in the specification for the purpose of forestalling objections to the granting of a patent which would probably have been made if it had been conceded by the inventor that an electric current was generated and flowed along the connecting wire, to which the healing effect of the device might be attributable.

"It may be conceded that one who discovers a new force or a new capability of a known force, and who provides some practical means for applying the new force or the new capability to a useful purpose, may obtain a patent, although the means which he provides are substantially old, or of such a kind that, when considered alone, and without reference to the utilized force or capability, they would not be patentable. We think, however, that a patent cannot be lawfully granted when, as in the present case, it appears that the claim preferred by the patentee that he has made a discovery of a new fact or principle in medical science, and of a new mode of operation of a known force whereby the discovery is utilized, rests upon no substantial foundation and is at best an imaginary hypothesis, and was most likely put forward merely to obtain a patent on a device which he proposes to make and sell to the public for the treatment of disease. The granting of a patent under the circumstances last stated would give to the theories enunciated in the specification an appearance of authenticity, and tend to mislead and deceive the public if the theories are false.

"For these reasons we are of the opinion that the patent in suit does not describe or cover a patentable device, and that it ought not to have been granted. It is

accordingly ordered that the decree below be reversed, and that the cause be remanded, with directions to dismiss the bill of complaint."

The result of this decision is to return to the public the right of free use of the invention in the Eighth Circuit only of the United States, for the jurisdiction of that court does not extend beyond this boundary. Outside of this circuit the inventor's letters-patent are still valid and he can enjoy a monopoly of his inventions, although one of the highest courts of the land has said that "this patent does not describe or cover a patentable device, and that it ought not to have been granted."

The more objectionable features, however, of patents of this character lie in the implied endorsement by the Government of the theories and claims enunciated in the specifications. While letters-patent are no more than governmental attestations of exclusive right to make and use the invention, still a patented device for the cure of disease must necessarily convey to the general public an impression of authenticity; that the Government has investigated the claims of the inventor and found them, as well as the principles upon which the claims are based, to be demonstrable facts. The foisting on the public of patents of this character, backed by extravagant claims and testimonials, should be prohibited by law.

The American Bar Association is at the present time endeavoring to secure the organization of a Patent Court of Appeals to sit in Washington, D. C., which shall have appellate jurisdiction over all patents and whose decision shall be final and binding for the entire United States. With concerted action on the part of the Medical Profession in conjunction with the American Bar Association, it should not be a difficult matter to secure such legislation as will prevent the issuance of patents as those above mentioned.

CONSENT TO OPERATION PROVEN.

Mrs. Salina Schneider, of New York, some time since brought suit for $3,000 damages for the loss of the right thumb, which had been amputated, according to her complaint, without her knowledge or consent. The case was decided in the physician's favor, being tried before Justice MacLean and a jury, and upon appeal to the Supreme Court, the verdict was sustained. It was proven by the defendant that a diseased nail root had been detached from the plaintiff's thumb with her full knowledge and consent.

X-RAY SUIT UNSUCCESSFUL.

A suit of interest to physicians has just been decided by Justice O'Gorman in the Supreme Court, who dismissed the damage suit of Miss Josephine MacDonald against Nelson T. Shields and G. F. Jernigan, dentists, and M. J. O'Connor, X-ray specialist, without letting it go to the jury. She sued to recover $50,000 for damages she alleged she sustained through an X-ray examination made on her by O'Connor, under the supervision of the other two defendants, whom she had consulted as dentists, in regard to the condition of her teeth. She was severely burned by the rays, and her hair fell out, leaving her bald. Justice O'Gorman decides that Shields had nothing to do with the operation, which was entirely under the supervision of O'Connor, and that he cannot be held liable because the plaintiff had voluntarily submitted to the examination. As to Jernigan, Justice O'Gorman held that he was merely an assistant to Shields and was not liable either. Moreover, as O'Connor had not been served with any summons or complaint in the action, no case could be made out against him. Miss MacDonald asserted that she had not gone voluntarily to O'Connor's office, but had been taken there by Shields and Jernigan without being told what the purpose of the visit was. Justice O'Gorman held that the preponderance of the evidence showed that she had consented to the operation. Miss MacDonald's counsel announced that an appeal would immediately be taken.—Medical News.

SENTENCE UPON A PHYSICIAN FOR MALPRACTICE.

The report of medico-legally important cases is always significant. Hence note is made by Dr. Keferstein, Imperial Court Physician at Magdeburg (C'blatt f. Gynak., 1902, No. 23) of the sentence to five months' servitude pronounced upon a physician for applying an obturator to prevent conception in from 700 to 800 women, which in five caused bodily damage. It consisted of a disc with two arms attached which separated within the womb to retain the device insitu. Its use lowered the birth-rate to a very large degree, because, although semen could pass upward through spaces permitting menstrual outflow, the presence of the arms within the cavity prevented arrest and development of the fertilized ovum. In one of the women an arm of this villainous foreign body broke off, and in others various injuries to the womb occurred. Since the doctor represented to his patients that his obturator was "harmless" as well as "effectual," he was adjudged guilty of malpractice and accordingly punished.—Medical News.

JUDGMENT AGAINST CHARITY PATIENT. .. ..

There was admitted to the free clinic and hospital of the Post-graduate School of Chicago, in March, a charity patient suffering from a nervous disorder. Dr. Kuh, the attending physician, discovered that the patient had means and, maintaining that under these circumstances the party had no right to free services, brought suit for $20.

Judgment was rendered in his favor.

A TOLEDO MALPRACTICE SUIT DROPPED.

An action against Dr. John G. Keller, Toledo, brought by Earl Herminghuisen, for $10,000 damages, alleging malpractice, was dismissed on October 15th, immediately after the jury had been impaneled. The plaintiff was assessed the costs. The indications are that this action had no grounds, and a firm and emphatic refusal to compromise resulted in the withdrawal of the action.

HOSPITAL WINS SUIT.

An action for $10,000 damages, brought by Lena Duman, as administratrix of the estate of Frank Duman, against the Buffalo Hospital of the Sisters of Charity, has been non-suited. The complaint alleged that Duman was accepted by the hospital as a patient to be treated for delirium tremens, at a rate of $7.00 per week. He was assigned to a room on the second floor, and while in an irrational state, and owing to the lack of attendance and attention, he jumped out of a window, falling thirty feet and sustaining fatal injuries.

ADDY LOSES SUIT.

An opinion was handed down July 7, by Judge Stowe, in the mandamus proceedings of F. Kurtz Addy against the board of trustees of the Western Pennsylvania Medical College and others, to compel the defendants to award the plaintiff a degree of Doctor of Medicine. The court entered judgment for the defendants at the cost of the plaintiff. The court holds that the refusal of the trustees to approve the recommendation of the faculty that a degree be granted was solely a matter for the trustees, unless in a case of bad faith or in violation of the principle of right and justice. Nothing of the kind is alleged in this case. Under the law, the faculty has no right to give or authorize a diploma until the same meets with the approval of the trustees. In conclusion, it is not necessary to examine into the reasons given by the trustees for their refusal to grant a diploma.

A Few Commendatory Clippings.

The publishers of the MEDICO-LEGAL BULLETIN desire to express their sincere thanks for the many kind expressions of appreciation and endorsement of their efforts in producing a Journal, which shall to a certain extent, record those acts of legislatures and judicial decisions effecting the welfare and interests of the profession. We have clipped and herewith present a few of the many encouraging words in behalf of the MEDICO-LEGAL BULLETIN.

Medico-Legal Bulletin.—The first number of this new journal has just appeared from the Physicians Defense Company, of Fort Wayne, Ind. It promises to be a bright, up-to-date and useful periodical.—Medical News.

The Medico-Legal Bulletin presented itself in October as the first journal in the world devoted strictly to the interests of the medical profession from a legal viewpoint. It is published monthly by the Physicians Defense Company, Fort Wayne, Ind.—Buffalo Medical Journal.

Medico-Legal Bulletin.—We are in receipt of the first (October) number of this little monthly, which is published at Fort Wayne, Ind., by the Physicians' Defense Company. It is issued "in the interest of the medical profession from a medico-legal standpoint," and contains recent legal decisions, answers to questions on medico-legal jurisprudence and special articles for the guidance of the physician.—Mississippi Medical Record.

No. 1 of Vol. I., of the Medico-Legal Bulletin, published by the Physicians Defense Company, of Fort Wayne, Ind., is before us, and it pleases us very much. It is proposed in this monthly to publish articles, and reports, and decisions, and statements affecting the practice of medicine. In a series of original articles the laws governing the practice of medicine and defining the physician's liability to state and patient, will be analyzed and classified. Every practitioner is interested. The price is $1.00 a year, or 15 cents a copy.—Eclectic Medical Gleaner.

MEDICO-LEGAL BULLETIN, A NEW JOURNAL.

The Physicians Defense Company, of Fort Wayne, Ind., are publishing a sprightly monthly journal called the Medico-Legal Bulletin, price, $1.00 per annum. The first two numbers have appeared and are very meritorious. Success to the new venture.—Medical and Surgical Monitor.

It would seem that the entire field of medical journalism was well covered by the numerous journals published, but medico-legal matters have been neglected. A new monthly journal, The Medico-Legal Bulletin, has been started at Fort Wayne, Ind., to fill this vacancy. The Bulletin will give reliable and accessible information relative to the laws governing the practice of medicine, the relation of the physician to the public and the state, and his rights, duties and liabilities under those laws. Sample copy of the Bulletin sent free to any of our readers.—The Wisconsin Medical Recorder.

Medico-Legal Bulletin is the title of a new 12-mo. monthly of 28 pages, whose initial issue bears the date of October, 1902. As stated in its editorial columns, it owes its inception to the numerous requests of medical practitioners for reliable and accessible information relative to the laws governing the practice of medicine, the relation of the physician to the public and to the state, and his rights, duties and liability under those laws. It is published at Fort Wayne, Ind., by the Physicians Defense Company, at $1.00 per annum. From our examination, it contains much matter of value and interest to the medical profession.—St. Louis Medical and Surgical Journal.

The Physicians Defense Company, of Fort Wayne, Ind., has just issued the first number of the Medico-Legal Bulletin. This little paper covers a field which is somewhat neglected in medical journalism. All of us will be glad to get a little medical jurisprudence in our monthly reading matter. The paper has a query section. This will afford the subscriber an opportunity to ask some vexatious legal questions which concerns medical affairs without advancing a five-dollar retaining fee. This section should prove an especially good feature.—The Medicus.

Medical Jurisprudence and Toxicology.

By John J. Reese, M. D.

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Few lawyers give much time to the study of medical jurisprudence, or have any books on that subject. Even criminal lawyers, who have more frequent occasion to apply its principles in practice than any others, are rarely more than superficial students of it.

It is in the trial of civil actions for malpractice, however, that a knowledge of this branch of the law is most important and most conspicuously wanting. While such suits are far too common in point of merit, they are rare as compared with the whole number of cases tried in court. Many lawyers never try one in their lives, and few lawyers try many. When one comes to a practitioner busy in other lines of work he has no time to "cram" such ponderous treatises as Beck or Wharton and Stille, and so he dashes in, "catch-as-catch-can," trusting more to his adversary's usually reliable ignorance than to his own information. It is a misfortune—we might say, a wrong—to the medical profession that such things should be. They are justly entitled to adequate protection against piratical suits which the law is often really unable to give them for want of lawyers familiar with the subject matter.

One of the difficulties in the way of better preparation for this work by the average lawyer is the very bulk and fullness of the old text books on the subject. He cannot afford to master them on the bare chance of a retainer in a malpractice case some time in the dim future; and when the case comes there is no time for it. To such a man this compact volume will have a special value. It is somewhat in the style of the "horn-books" recently coming into renewed favor, in which the pith of the law on a given topic is presented in clear and condensed form—predigested, one may say, ready for immediate use. It is devoted to the medical side, rather than the legal side of medical jurisprudence, but here it furnishes to a busy man just what he needs—the latest learning of the science in clear, full and compact form.

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JANUARY 1903

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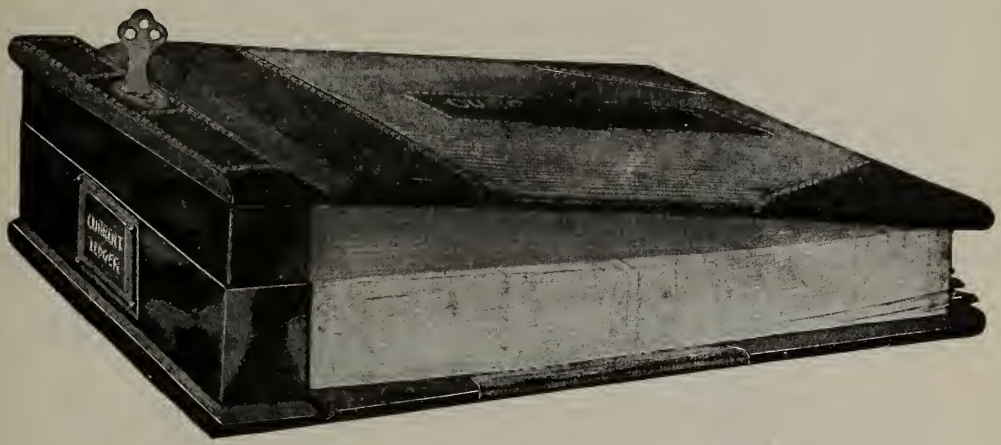

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I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

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Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__.

A. P. Buchman,
President.

_____
Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

Legislation for the Prevention of Malpractice Suits.

Malpractice actions are still being brought against physicians and surgeons in great numbers and there seems to be no relief in sight. The law has put upon the profession certain requirements as to skill and care, which make the defense of a case as easy as it can be, and yet make it possible to retain the high standard to which the profession has risen. But this legal status does not prevent suits being brought to cause the profession annoyance and the expenditure of money and time in their defense. If a law could be passed which would make the bringing of a suit most difficult, the protection would be more adequate than it is now. No such law has been passed in any state to our knowledge, though many suggestions have been made in one form or another looking to a solution of the problem.

Several years ago Dr. F. J. Groner, of Grand Rapids, drafted a bill which he suggested would secure protection from suits, but which was never passed by the Legislature of Michigan to our knowledge. The following is the bill as he prepared it:

> "1. Be it enacted by the Legislature of the State of Michigan, That in all suits that may be brought against any physician or surgeon for any alleged damages done in his profession, the plaintiff shall, before such suit be commenced, give a bond in at least double the amount of damages claimed in the suit.
>
> "2. Such bond shall be signed and secured by two or more sufficient sureties, who shall be freeholders, to be duly approved by one of the judges of the court in

which suit shall be commenced, conditioned, that if the plaintiff shall not maintain such suit, or shall not recover against the defendant, such sureties shall well and truly pay to the defendant all costs and damages that the defendant may sustain by reason of such suit, and all legitimate expense incurred in defending the same.

"3. If, during the pendency of such suit, the sureties, or either of them, shall become insolvent or irresponsible, the plaintiff shall immediately substitute other and good and sufficient sureties, to be approved in like manner as hereinbefore provided for.

"4. In case the plaintiff shall not comply with the provisions of this act, no such suit shall be maintained against any physician or surgeon for any alleged malpractice, and that any suit may be dismissed on motion of any such defendant at any time after any process may have been served on the defendant in any such suit; and such defendant may be entitled to and shall recover against any such plaintiff such costs and damages as the court shall award upon such motion to dismiss any such suit.

"5. Whenever any plaintiff shall not maintain the suit, nor recover damages, as hereinbefore provided, the defendant shall immediately be entitled to commence a suit upon the bond, hereinbefore provided to be given, and such a suit shall be a lien upon the property specified in such a bond, upon notice of lis pendens being filed with the clerk of the court in which such suit shall be commenced.

"6. All acts or parts of acts inconsistent with this act are hereby repealed.

"7. This act shall take effect immediately."

A more recent suggestion comes from one of the readers of the Bulletin in a letter just received as follows:

"Editor Medico-Legal Bulletin:—

"I have read with interest your article—'Origin and Growth of Physicians' Liability.' You speak as though the physician is adequately protected against blackmailers. Do you think that statement is true? I do not. Why do you not advocate filing a bond by the plaintiff in these cases to compensate the defendant for the annoyance of suit, damage to reputation, loss of time, etc., in case the action is non-suited or lost? The

plaintiff, as it now stands, has all to win and nothing to lose. With the doctor it is just the reverse.

"JOHN A. HAWKINS."

Both of these suggestions are pertinent to the question; but do they meet the case? The Legislature of a state cannot take away a right which its citizens have under the constitution of that state or of the United States. Every citizen who feels himself agrieved is entitled to his day in court and no law can be passed which will destroy that right. But the Legislature can modify or alter or even destroy the remedy. It can say how long it will leave the courts open for the bringing of the action and under what conditions and methods of procedure it shall be prosecuted, but it cannot tamper with the right. It can so modify the remedy that the right is practically of no avail and yet it will not violate the constitution in doing so; but such a modification will be critically examined and strictly construed, and the unreasonableness of it may be fatal to the law.

Every wrong done to an individual violates some right which is guaranteed to him as a citizen. In the malpractice case the right violated is the right to personal security just as in all cases of personal injury of whatever nature. The Legislature of a state cannot interfere with that right, though it can say when and where the action must be brought. If it were to pass such a law as that suggested in the quotations, it would practically bar all malpractice actions whether just or unjust, for the majority of plaintiffs in those suits are of the poorer classes who could not furnish bond, and, therefore, they would never be able to recover even just damages. This is what is wanted by the profession, of course. It would, probably, be constitutional, but the difficulty would be to get such a bill through a Legislature for damages for negligence and Legislatures are very slow to single out any particular wrong from a general class of civil wrongs and provide a stricter and severer remedy for the recovery of damages for its commitment than for the balance of the class. If such a requirement should be had of the plaintiff in a malpractice action, it would be just as reasonable to require it of plaintiffs in all other actions for the recovery of damages for injuries received. That, it is obvious, would be impossible. It would be denying protection to the community at large, for an individual is liable to be injured at any time by the carelessness of another and the courts ought not to be open only to those who can furnish bonds conditioned upon the successful termination of their suits. The law would not be so unfair as that.

Furthermore, a Legislature would laugh at any such bill

and turn it down without consideration. Too many bills of similar nature in other matters have been drafted and presented with like fate to consider now such a bill as that suggested. Some other means to gain a more adequate protection for the profession will have to be conceived than legislation of this character. If the unjust and blackmailing suits could be separated from the just and honest actions and be prevented without a court proceeding, the desired end would be achieved; but that cannot be accomplished by any legislation thus far suggested. We sincerely hope there may be a speedy termination of the physician's liability to blackmailing schemes by iron clad rules of procedure applying to the originators of the actions which are so harsh and severe that none but worthy patients having just claims can prosecute them.

The Common Law, which is the law governing the physician in his actions today and, as was said in a previous article in the Bulletin, is as favorable to the physician as it can be, excluding the uncertainty of a jury's verdict, does not and cannot prevent a suit for malpractice, but it can only protect the physician when he is once in court. The statute must protect him against the bringing of the suit, and what will be the best way to accomplish that is still mere conjecture. The Medical Societies over the country should take the matter up for serious reflection and discussion and co-operate with their legal brethren in the formulation of some definite and concerted plan of action, embody their suggestions in the form of a bill and present it to the various legislatures of the union. No other way will bring about an early settlement of the matter.

A Recent Malpractice Decision in Which the Court Recognizes the X-Ray as an Approved Method.

A case of unusual interest to the profession is that brought in the Elkhart Circuit Court by Shelley against Dr. G. W. Spohn, of Elkhart, Indiana, for burns caused by the X-ray. The defendant procured a change of venue to the LaGrange Circuit Court, in which court the case was tried early in December last.

Dr. Spohn is a specialist of the eye, ear, nose and throat and has been using the X-ray in treating his patients for some time. The plaintiff came to Dr. Spohn last spring, suffering with a growth on the under left side of his tongue. Dr. Spohn diagnosed the growth as cancer and told the patient the only thing he could do for him was to treat him with the X-ray. The patient consented; the doctor told him of the uncertainties of a burn and then gave him about a dozen treatments, one each day for

about two weeks. After the last treatment Dr. Spohn noticed a very slight dermatitis beginning on Mr. Shelley's face. He gave him a lotion to put on his face; no more X-ray treatments were given him, and the patient, after visiting Dr. Spohn a few times, left the city, he claimed, for treatment of his burns. He later brought his action for malpractice, claiming $10,000 damages and alleging that the burns were due to the doctor's negligence in not providing a covering for the face to protect it from the action of the rays. He further alleged that he was directed to use his left hand to hold down the lower jaw during the exposures; that there was produced a severe burn on the hand, which has permanently crippled it; and that each exposure lasted an excessively long time. The doctor denied the complaint generally and set up contributory negligence on the part of the plaintiff.

Plaintiff appeared in court, his face showing no perceptible signs of having been burned, while his hand was badly distorted, a sore on the back, close up to the knuckle of the middle finger, on healing, having drawn up that finger and generally distorted the hand. The serious part of the case was therefore to explain away the injury to the hand. There was not much contention over the burned face. The doctor did not deny that the face had been burned. He contended that there was no way of telling what strength of ray would burn a particular patient, for a ray that would produce a dermatitis in the tissues of one person might not affect another at all. He said he used a medium vacuum tube and provided a suitable covering for those parts of the face which he wished to protect. At first this covering was a lead disc for two or three exposures, and then lead foil was used with other materials during the remainder of the treatments. These statements were all corroborated by the doctor's assistant, who attended each treatment, and who, during the most of the time, held the coverings on the face of the patient. The plaintiff testified that each treatment lasted thirty minutes, while the defendant and his assistant both testified that the treatments lasted from three to seven minutes. The questions of length of exposure and failure to use a proper covering were, therefore, one of fact entirely, with the statement of the plaintiff unsupported on the one side, and the statement of the defendant supported by that of his assistant on the other, and approved as good practice by his experts. The plaintiff attempted to strengthen this part of his case by introducing photographs taken of himself showing the condition of his face from time to time. They showed the face to be greatly

swollen at first, so much so that he said that he could hardly see. But that fact counted for nothing when once the use of a proper covering was proved.

Plaintiff further contended that his eye was injured so that the vision was considerably affected. Defendant's experts examined the eye and found nothing unusual. So that charge failed. There was nothing left then but to explain the distorted hand.

The plaintiff alone testified as to the use of his hand as alleged. Dr. Spohn, corroborated by his assistant, said that the plaintiff continually used his hand to wipe the saliva from his chin, against explicit directions to keep the hand down; and that in doing so the covering would be knocked off the face, necessitating the cutting off of the current. The plaintiff was suffering considerably from the cancer and had little vitality during the treatments, and his restlessness, together with his persistence in wiping off his chin, which, of course, was underneath the covering, brought his hand up to or near the path of the rays, and it would have been acted upon by the rays had there been no covering.

Defendant's experts took the view that the X-ray, when it burns at all, produces a dermatitis upon the tissues in the path of the rays, the greatest effect being where it is the strongest. In this case the rays were directed into the mouth of the patient, and accordingly they would be the strongest there. If plaintiff were required to use his hand to hold down his lower lip and jaw, as he claimed he was directed to do, it would be reasonable to expect to find the burn the worst, if one should occur on the hand, where the hand approached the closest to the path of the rays, namely, on the tips of the fingers. These experts examined the hand of the plaintiff for that purpose, but found no evidence at all of burns on those parts of the fingers. Plaintiff could not then say that his hand might have been so placed to his mouth that the back of it came into contact with the rays, while the fingers were out of the way. The simple experiment will show that the rays would probably be cut off altogether from passing into the mouth if the hand were so placed. The only reasonable explanation of the condition of the hand then was that it was due to an affection of some kind. This was considered by the experts to be accounted for by the hand coming into contact with the saliva when wiping off his chin the poisonous saliva getting into an abrasion of some kind on the back of the hand. Each expert so testified, and plaintiff could not dispute it, only by ridicule.

The case was very ably presented to the jury and it ren-

dered its verdict for Dr. Spohn without much delay, and answered favorably each interrogatory propounded by defendant. Dr. Spohn's testimony was so clear and free from contradictions, and his statements were so accurately supported by his assistant, that the jury could not do otherwise than believe the defense. The case was too clear to leave any doubt. The point on which there seemed to be the greatest danger—that of the alleged burn to the hand—proved to be not so difficult when once the real nature of it was known. Plaintiff had no expert, save a few depositions of physicians who were not present, to contradict defendant's experts, whose opinions were unanswerable.

This experience of Dr. Spohn illustrates the necessity of proper self-protection in the performance of services, particularly when the services are somewhat of a new and untried nature. If Dr. Spohn had not provided himself with an assistant who could remember the details of the treatments along with himself, and had been careful to make a note of all that he did, the defense would not have been so easy to present, nor so forceful when presented. When a witness takes the stand and speaks with a certainty and a positiveness which carries with him an absolute guarantee of the truth of what he says, a court cannot overlook the force of the testimony, and the jury cannot but give it due weight and be controlled by it, particularly when the testimony of the witnesses for the other side savors of falsehood from start to finish. This was the case here. The jury could not do otherwise than believe the defendant's testimony in regard to the use of the protection, when it had previously listened to the testimony of the plaintiff. There was no chance for comparison.

There is little likelihood that the case will be appealed, although there is need of a precedent, there having been heretofore no X-ray case ever decided in any Supreme court in the country. This case is so plainly one of fact that there is little chance of the Appellate Court reviewing it. It will assist in removing a sense of timidity which practitioners cannot help having in the use of the X-ray for the treatment of their patients. It is apparent by this case that the court did not consider that the defendant had made such a departure from the recognized methods of his school that he would be liable for any injury, whether or no he was negligent. But he recognized the X-ray treatment as one being quite generally adopted and used, and that the practitioner using it would be liable for ordinary negligence and for failure to exercise ordinary skill and care, just as any physician or surgeon is held.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

AN OSTEOPATH FINED.

Judge Heisley, of the Monmouth County Court, fined E. M. Haning, of Asbury Park, N. J., $100 and costs for illegal practice of medicine. The judge held that the treatment of disease by the aplication of hands was a remedy in the same sense as the application of drugs. It is claimed that this is the first case of the kind in the state.

INDIANA DOCTORS FINED.

G. W. Ober, of Indianapolis, and W. T. Richardson, of Jeffersonville, were found by the Circuit Court guilty of practicing medicine without a license and were fined respectively $207 and $47.

COMMON COUNCIL OF BUFFALO AFTER MEDICAL FAKIRS.

As the result of the Buffalo Review's articles relative to Antonius advertising himself as the "Boy Wonder and Healer," the Common Council of that city passed a resolution without a dissenting vote calling upon the corporation counsel to draft an amendment to the statutory laws, which would prohibit treatments not bonafide physical treatment and making such offenses criminal acts. The resolution provided that the senators and assemblymen representing Erie County in the State Legislature be directed to use all honorable means within their power to have the legislature pass the proposed amendment.

Montana has a state board of Osteopaths.

FINED $75 FOR ILLEGAL PRACTICE.

The New York County Medical Society, as complainant, brought an action against the Rev. W. N. Ritchey, secretary of the Inter-Denominational Committee for the cure of the drug habit, for practicing medicine illegally in the State of New York. From the evidence it was held that Dr. Ritchey was prescribing a remedy for those who came to him as victims of the drug habit. The treatment was designed and on account of donations received was furnished free to those who could not afford to procure the remedy themselves. As Dr. Ritchey had not qualified nor passed his examination as a physician, the law held that he could not prescribe a remedy.

COLORADO'S MINIMUM PERIOD OF QUARANTINE FOR SMALLPOX.

The State Board of Health of Colorado has issued an order that patients having smallpox shall be quarantined not less than four weeks from the first eruption, and in any case not less than ten days after the scaling is completed.

ILLEGAL PRACTICE.

Drs. Garnagan & Rohmer, of Hancock County, Mississippi, were on the 27th day of November last convicted of illegally practicing medicine. The former was fined $100 and sentenced to thirty days in jail. He, however, not being present, his bond was forfeited. The same sentence was passed upon Dr. Rohmer, but was suspended on his promise to return to college and prepare himself for examination before the state board.

THE VACCINATION LAW SUSTAINED.

A man living in Queen's Borough recently applied to the Supreme Court for a mandamus to compel the Board of Education of Queen's to admit his son into a public school without requiring him to be vaccinated. The justice in denying the writ said that the State law excluding children from the common schools until they are vaccinated is a health law within the power of the Legislature to pass, and was therefore constitutional and valid.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I JANUARY 1903 No. 4

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

$1.00 Per Annum SUBSCRIPTION RATES **Single Copies 15c**

ADVERTISING RATES FURNISHED UPON APPLICATION. Non-ethical advertisements will not be received, the publishers reserving the right to reject and discontinue any advertisement at any time.

EDITORIAL NOTES

The jury system of the United States, as now practiced in all the courts, has its opponents as well as its supporters. Many things can be said in its favor, and as many or more things against it. At the time of the adoption of the constitution of the United States the jury system was already old and well tried and it was only natural that this system should be adopted in this country as the safest possible mode of trial of a question of fact. Such would be the case now if men of sound judgment and men able to think and reason for themselves would always compose the jury. But all of us know how far from true that is, and, perhaps, some of us know it by bitter experience.

One never knows when he sees a jury whether he can safely entrust his case to it or not, for so many times it is made up of men who are with the side which has the last say or with the side which arouses their sympathy the most, irrespective of whether that side has the law and the facts with it or not. Local prejudices may creep into the jury and damage may be

done before either side is aware. This is particularly true in reference to the malpractice action.

The doctor in his practice is thrown in with all sorts of people and the less intelligent they are the more dangerous they are in case of a suit, should any of them ever be sitting in judgment upon his services to another. One of them is liable to carry with him the remembrance of some service rendered by the doctor to a member of his family, or a friend, or another person, which he imagines was not just right, and to that extent be prejudiced against him. This may crop out in the selection of a jury and it may not; but it is the duty of the doctor's attorney to see that no such person sits as a juryman, and he must be alert and ready to take advantage of every point to be of best service to his client in such matters. A striking illustration is that which has just occurred at Columbus, Ohio, in the case of Minser v. Baldwin,, as reported in the Columbus Citizen of January 13th, 1903, which speaks for itself:

"JURYMAN DISMISSED.

"One Juror in Judge Williams' Court Disqualifies the Other Eleven.

"The jury in Judge Williams' court was dismissed late Monday afternoon, when about to hear the first case of the present term of court. An entire new jury was impannelled Tuesday morning, and the case started again.

"The case in question was that of William H. Minser, administrator of the estate of Lida Minser, against Dr. James F. Baldwin, for $10,000 damages, on account of an alleged improper operation. Sager was excused from the jury because he admitted that he was prejudiced against Dr. Baldwin, but stated to the jury later that he did not like Dr. Baldwin because Mrs. Sager died while under his care. At the same time he exhibited a picture of tne deceased.

"When the attorneys for the Physicians Guarantee (Defense) Company learned of the statement, they lost no time in asking that the entire jury be dismissed. Judge Williams granted it, after lecturing Sager for his untimely remarks."

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

CALLING A PHYSICIAN A "QUACK" HELD TO BE LIBEL.

A newspaper said that a certain candidate for office might as well give up the fight. It had supposed that he had at least a fighting chance, if not an absolutely sure thing. "But," it continued, "here comes Doctor Ralph Elmergreen, the spick and span practitioner, who says that it's all off, and that all the powers of hades can't prevent Sam's re-election. The burden of the doctor's refrain is vindication—for Sammy. It appears that some untruthful democrat misquoted Sam's Hartford speech, particularly that portion of it concerning the regulation of trusts. We do not know what Barney said about trusts; neither do we care. Sufficient be it that we do not look to a 'quack' to set us right in the matter." * * * * An action for libel followed. Evidence was produced on behalf of the party sued, who was the editor, publisher and proprietor of the paper, to the effect that he knew that the party suing was a physician and surgeon, but that he had no intention of injuring him in his professional capacity. There was also evidence introduced on behalf of the publisher in regard to the various dictionary definitions of the word "quack." The result was a verdict and judgment for the publisher. But this last is reversed by the Supreme Court of Wisconsin, and a new trial ordered. It says, Elmergreen vs. Horn, that it was correctly ruled that to speak of a physician in his professional capacity as a "quack" is to call him a mere pretender, a person boasting of attainments which he does not possess, and is libelous as a mattter of law. It was further correctly ruled that in a case of this kind, if there are conflicting reasonable inferences as to whether the alleged libelous language should be understood in a libelous sense, the right of the matter

must be determined by a jury. The trial judge concluded that there was such a conflict in this case, and refused to give instructions to the jury in effect, taking away from it the question of whether the article complained of was libelous per se, or in and of itself; and that is what the Supreme Court holds was reversible error. Candor, it declares, compels it to say that it can not discover any doubt, approaching the boundaries of reason, as to whether the term "quack" was used with reference to the party suing in his capacity as a physician and surgeon. Taking the language altogether, with the same certainty as it referred to him as doctor, it referred to him as quack doctor, as a mere pretender in his profession, a person not possessing the skill of a reputable practitioner of medicine, though assuming to have such skill. Note, it says for one thing, the significance of the enclosure of the word "doctor" in quotation marks, indicating that the writer wished to dignify him by the title of doctor in no other sense than that he was so called or held himself out to the world as such. And finally the Supreme Court says that it would be a waste of time to multiply words in demonstrating that the only meaning suggested by reading the article in question was that the party suing was referred to therein as a quack doctor. If the learned circuit judge had not considered the matter doubtful, the court would feel that one could not seriously present it for consideration from the standpoint of the party sued. That the judge erred in submitting the primary question of the latter's liability to the jury, the court regards so clear that it is not justified in saying more.—Jour. Amer. Med. Assn.

PROPERTY NOT DAMAGED BY THE LOCATION OF PEST HOUSE.

The Court of Appeals of Kentucky has affirmed a judgment of a lower court in favor of the city and county of Henderson. The evidence produced at the trial shows that the pest house was located 474 feet from the plaintiff's property line and 1,250 feet from his house. By a preponderance of expert testimony it was proven that the contagion from smallpox could not be carried through the air more than 200 feet. Upon these facts the Court of Appeals holds that the jury passed their verdict, and that they were particularly qualified to pass upon the question of damages of this character.

SUIT FOR A NITROGEN GAS TREATMENT OF CONSUMPTION.

A suit was brought in the Circuit Court of Cook County, Ill., in November last, by one Frank B. Pease, executor of the estate of the late August Dahlin against Drs. John B. Murphy and August F. Lemke for $25,000. Plaintiff alleged in the complaint that the Nitrogen Monoxide Gas treatment invented by Dr. Murphy was applied in 1898 by Dr. Lemke to Mr. Dahlin and that as a result of said treatment the latter's life was materially shortened. The case was called for trial in the latter part of November. After the plaintiff had completed his evidence the judge instructed the jury to render a verdict in favor of the defendants. This was done, although they had not presented a witness in their defense.

The German courts have rendered a decision of great importance to the medical profession in the case of a Nuremberg physician who was arrested on a criminal charge for neglecting to notify the authorities of the death and mutilation of a newborn infant. The physician was called to attend a woman who was seriously ill. In his examination he discovered that she had recently given birth to a child and he found the mutilated remains of the infant in a vessel under the woman's bed. Apparently the child had been dead but a short time. He deemed it his duty to remain silent regarding the criminal aspects of the case and went on with the treatment of the woman just as though he had not discovered the child's body. In some way the facts became noised about and when the police made an investigation they learned of the physician's connection with the case and his knowledge of the death of the infant, and he was placed under arrest, charged with what in this country would be equivalent to being an accessory. On trial he set up as his defense that he had acquired the knowledge of the alleged crime in his professional capacity; that had he not been in confidential relation with the mother as her physician he would not have known of the existence of the child's body; that none but a physician could have known of the woman's condition, and then only could he receive the facts as a matter of professional confidence. The courts held that his position was correct and within the law; that to have made known his discovery would have been to violate the confidential relations existing between physician and patient, and he was discharged from custody after an honorable acquittal.—Buffalo Medical Journal.

A PHYSICIAN'S FEES SUSTAINED.

Wnether a physician who attended a case in a summer resort was under obligation to continue payment for the same rate of treatment he there received after his return to the city, was recently passed upon by a supreme court jury. Dr. Jacob H. Asch, of New York, sued a patient for some $250 on account of his visits paid at Arverne, Long Island, a seaside settlement about an hours' distance by rail from Manhattan. The patient who first called in the physician while both of them were at Arverne, asserted that $15 a visit was too much to charge after leaving the resort, and that the trips out of town ought to have been charged at the same rate as visits made when both were at Arverne. After deliberating for five hours the jury decided in favor of Dr. Asch, awarding him the full amount of his claim.—Boston Medical and Surgical Journal.

THE LARGEST KNOWN VERDICT FOR DAMAGES.

As a result of the Park Avenue tunnel disaster in New York City, William Leys lost his life. His widow was on December 2nd awarded a verdict of $100,000, with interest from the date of the accident, and a further allowance of $2,000 for counsel fees. It is stated that this is the largest sum ever awarded in any county in any suit for damages for personal injury resulting in death. Mrs. Leys in her complaint declared that her husband had been making an annual income of nearly $30,000. The suit was brought against the New York Central and Hudson River Railroad Company for $250,000.

BUT ONE PHYSICAL EXAMINATION ALLOWED.

The Appellate division of the Supreme Court of New York says that although the provisions of the "Code of Civil Procedure," in reference to examinations before trial, were intended as an extension of the provisions of parties sued in actions for personal injuries having waived their rights could not subsequently invoke its protection. The court is therefore of the opinion that the railroad company having waived the right to an examination by a physician appointed under the order of the court could not afterwards take advantage of the section of the "Code" providing for such examination. By accepting a physical examination under the stipulations of the party suing, the company waived its right to have another physician appointed by the court for that purpose.

SENTENCE UPON A PHYSICIAN FOR MALPRACTICE.

The report of medico-legally important cases is always significant. Hence note is made by Dr. Keferstein, Imperial Court physician at Magdeburg (C'blatt f. Gynak., 1902, No. 23,) of the sentence to five months' servitude pronounced upon a physician for applying an obturator to prevent conception in from 700 to 800 women, which in five caused bodily damage. It consisted of a disc with two arms attached, which separated within the womb to retain the device insitu. Its use lowered the birth-rate to a very large degree, because, although semen could pass upward through spaces permitting menstrual outflow, the presence of the arms within the cavity prevented arrest and development of the fertilized ovum. In one of the women an arm of this villainous foreign body broke off, and in others various injuries to the womb occurred. Since the doctor represented to his patients that his obturator was "harmless" as well as "effectual," he was adjudged guilty of malpractice and accordingly punished.—Medical News.

GENERAL DEFENSE BY COUNTY MEDICAL SOCIETIES.

The Philadelphia County Medical Society has before it a proposition to hire a lawyer, or at least appoint one formally, as its regular counsel, to defend any of its members in malpractice suits, if found worthy. The object also is to regularly prosecute all illegal practitioners. This is good as far as it goes. We understand, however, that help is only to be extended to those who are worthy. This is a bad provision, and we trust that it will not prevail. Its existence would justify many resignations, for its enforcement would involve two trials—one to determine the worthiness of a member's cause, by the society or its agents, and the one in court. Of the two, the latter would necessarily be the fairer, for the reason that it would be before men trained in the work. On the other hand, if a physician's case happened to be misjudged—not a fanciful contingency, by any means—the object of the society's misjudgment would have his case seriously prejudiced by a knowledge of the fact that his conferers considered it unworthy of defense. This is a double-edged sword, that may cut any way. Some of the strongest cases of presumptive guilt have been shown by indubitable evidence to have been entirely innocent. If this move is made at all, it should be to extend legal aid to all physicians in danger of civil or criminal litigation who are in good standing.—The Medical Council.

ODD LAW POINT IS DECIDED.

Evidence tending to show that a man with an artificial leg may perform most of the ordinary acts done by men not so handicapped is upheld as competent by the Appellate Court in affirming a judgment of the Circuit Court in the damage suit brought by William Hamilton against the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company. Hamilton secured a verdict for $3,000, and prosecuted an appeal on the ground that the amount of the verdict was inadequate. He objected to evidence given by two witnesses who wore artificial legs. One of these testified that he "got around with about the same facility as a man with two legs, and could dance or ride a bicycle." "Art and invention," says Judge Freeman, "have done much to mitigate the inconveniences occasioned by the loss of limbs and to restore the power of locomotion and the earning capacity which otherwise might be greatly lessened or lost, and evidence tending to show facts of that nature was competent for the consideration of the jury."

NOVEL KIND OF INSURANCE.

In England people of moderate means are beginning to insure themselves against surgical operations. The plan is that subscribers who pay an annual fee shall be entitled either to free admittance to a hospital or nursing at home and a free operation, or to a fixed sum paid down to defray the cost of an operation if one becomes necessary. In England, as here, the cost of surgical repairs to the human body has become oppressively great to persons who just manage to pay their way. People who are obviously poor get a great deal of excellent surgical and medical treatment in hospitals and elsewhere for nothing, but for the next class above them a serious illness—especially if it involves an operation—is almost ruinous.

It would seem as if the time was near when societies for insurance against specialists might be profitably organized in the larger American cities. The specialist has come to be a very important—indeed, an indispensable—institution, especially to families in which there are children. The office of the family doctor has now become simplified to the task of coming in and telling the patient which specialist to go to. It is not that specialists charge too much, for their honorable services are above price. It is that landlord, butcher, baker, grocer, milkman, coalman, dentist and trained nurse do not leave you money enough

to pay them appropriately. To subscribe a considerable sum annually and have all the repairs and desirable improvements made in one's family without further disbursement would be a comparatively simple way out of a troublesome predicament.—Harper's Weekly.

DREAM LEADS TO DAMAGE SUIT.

One year ago John Erforth, a carpenter, while working on the partly finished St. Ann's Sanitarium building, North Forty-eighth avenue and Division street, Chicago, was the one man of four workmen who escaped being injured by the breaking of a scaffold. Erforth saved himself from serious injury and perhaps death by leaping from the falling framework to a window six feet below, where he clung to the ledge by one hand until rescued.

A less serious accident sent Erforth to the hospital October 19 last, and this accident is the cause of a suit for damages brought against the sanitarium. The carpenter dreamed that he was again on the falling scaffold and leaped out of bed. He landed heavily on the floor and dislocated his knee joint.

Now the question to be decided is whether a dream that causes an accident is sufficient ground for damages. Erforth claims the dream was caused by his thrilling experience at the sanitarium.

A WORD OF WARNING TO MEDICAL MEN.

We call attention to the fact that Dr. H. L. Spaulding has just been through a siege of prosecution. Dr. Spaulding is a Des Moines physician with a reputation as good as any. In March last, he was called to a fourth-class hotel, where he found a woman suffering from a self-inflicted attempt at abortion. The people were strangers in the city and of limited means. The doctor asked for a consultation, which was denied. The woman became dangerously ill that night, consultation was accepted, and Dr. Fowler, of Des Moines, was called in consultation. It was found necessary to curette the uterus and for the next three days the patient did nicely, when, against the opinion of both physicians, she was taken to her home in the country, to reach which it was necessary to drive overland for a number of miles. She was thoroughly chilled by the exposure and died the week following. Dr. Spaulding was indicted by the grand jury and placed under $8,000 bonds. At the trial it was shown by numerous witnesses

that the girl's condition was previously known for at least two months, and that a number of attempts had been made by her to relieve herself of her embarrassing condition. As soon as this testimony was introduced, Dr. Spaulding was discharged. This is not the first case of this kind that has happened in Des Moines, and it behooves every practitioner to look for this class of people and refuse to have anything to do with any stranger that comes under his observation unless they have consultation at all times.—Iowa Medical Journal.

PHYSICIAN MUST SHOW PRIOR APPROPRIATION FOR SERVICES.

The Nebraska case of De Wolf vs. Village of Bennett was brought by a physician to recover for services rendered in taking charge of a smallpox patient. He alleged in his petition that he was duly authorized by the State Board of Health to practice medicine and surgery in the State and had filed his certificate; that the village was a duly organized municipal corporation; that it was authorized by statute to provide pesthouses, to prevent the introduction and spread of contagious diseases, and to make contracts and incur expenses for that purpose; that on or about a given date a certain party was afflicted with smallpox, and the other residents of the village were in danger of contracting the disease; that the village, acting by and through its trustees, established a pesthouse, and requested him to remove the party thereto and to take charge of and treat the case, and prevent the spread of the disease, for all of which, through its trustees, it agreed to pay him, in pursuance of which he rendered the services sued for, which were accepted and received by the village and by the trustees without objection; that he made the fair and reasonable charge of $104 therefor, presenting his account to the village, and filing same with its board of trustees, demanding payment, which was refused. To this petition a general demurrer was interposed, the village contending that it was necessary for the physician to plead the contract, and that the proper preliminary proceedings had been taken by the village board, showing that an appropriation had been made, because, without such appropriation, the village had no authority to make contracts or create liabilities like that involved in this case. The demurrer was sustained, and the Supreme Court of Nebraska holds that this was proper, the claim on which the case rested being one for which a prior appropriation was essential.

INDIANA LAWS REGULATING THE DISPOSAL OF THE DEAD.

In 1895, Dr. George F. Edenharter, superintendent of the Central Insane Hospital, asked W. A. Ketcham, then Attorney-General, regarding the surrender of bodies of patients to medical colleges. Mr. Ketcham wrote an opinion to the effect that rights of the kin seem to be religiously protected. The opinion reads:

"Sir—In your inquiry of January 18, 1895, as to your official duties under the anatomy law with reard to surrendering the bodies of patients to medical colleges where demanded, I beg to say that the act of May 31, 1879, Sections 5607-8-9-15 of Burns's Annotated Revision of 1894, seems rather to have been drawn with the idea of preventing than of permitting the surrender of bodies for dissection purposes. The wishes of the deceased and the rights of the next of kin to the uttermost generation seem to be religiously protected by the act. The next of kin, as used in the act, Section 5615, includes the surviving:

"'(a) Husband or wife;

"'(b) Father or mother;

"'(c) Son or daughter; and

"'(d) Any relative within the sixth degree of consanguinity.'

"In order to effectually protect the rights of the parties, the act, Section 5609, provides that in the institution a record shall be kept in which there shall be entered on the day of the reception of the patient the name, sex and age of the person received, together with the place of residence and birth; the name and residence of parents, if living; husband and wife, if any, and brothers and sisters, if any, and the date and cause of death, if they died in the institution, and the body of no such person dying shall be delivered to a medical college, if such record affords proof or probable reason to believe that there are next of kin living within the United States, except upon the neglect or refusal of next of kin, after due notice, to receive and bury or pay for the burial of the body, but the body shall be decently interred, subject to the lawful rights or claims of the next of kin hereinbefore described.

"This means that if there is anybody in the United States

within the sixth degree of consanguinity there shall be no delivery for dissection purposes until search shall have been made for and the next of kin found, and a notice served upon them to ascertain whether it is their wish to take the body and pay for the burial of it.

"This is by no means all as a condition precedent for the delivery of the body of a person dying under your jurisdiction. They must:

"'(a) Have died in the hospital.

"'(b) Their bodies must have remained unclaimed for twenty-four hours after death. This is in addition to, and not in substitution of, what has been heretofore said.'

"The patient must have died without property, so that otherwise he must be buried at the public expense. The patient must have died without expressing a wish to be buried. If all of these requisites are satisfactorily fulfilled, then, in the event of a written application for the body being made by the faculty or other proper authority of a duly incorporated and reputable medical college or incorporated medical association within the State, it would be your duty to deliver the body; and in the event that two or more of such associations should have made such application to you, the delivery must be to the association first making the application, but the application must have been made before or within ten days after the interment.

"If the body is permitted to be in the ground for ten days, the college can only get it by the process of 'resurrection.' At the time of delivering the body it is made your duty to take a receipt from the association, describing carefully the name, age and sex of the deceased, the place, date and cause of death, and this receipt is to be preserved and recorded in a book which is required to be kept by you for that purpose to the end that in the event the remains are demanded by any relative or friend even, the body must be returned if it is claimed within twenty-four hours after you have delivered it over to the medical college.

"If, with all these restrictions, you can find a chance in the interest of science to deliver a body for dissecting purposes, haud equidem invideo miror magis."

Such is the opinion given by the State as to the Anatomy and Dissection Laws. And yet the medical graduate must make oath before the Indiana Board of Medical Registration and Examination that he has dissected three parts of a human body! The Legislature should act promptly and amend the anatomy law.—Indiana Medical Journal.

A Few Commendatory Clippings.

The publishers of the MEDICO-LEGAL BULLETIN desire to express their sincere thanks for the many kind expressions of appreciation and endorsement of their efforts in producing a Journal, which shall to a certain extent, record those acts of legislatures and judicial decisions effecting the welfare and interests of the profession. We have clipped and herewith present a few of the many encouraging words in behalf of the MEDICO-LEGAL BULLETIN.

We have been pleased to add to our exchange list the Medico-Legal Bulletin, published at Fort Wayne, Indiana. The two numbers we have received indicate that it will be not only interesting, but very helpful to the physician and to health boards. It contains matters not only relating to the medical profession, but to the executive department of sanitary bodies as well. It is published monthly at a cost of $1.00 per year.—Iowa Health Bulletin.

The Medico-Legal Bulletin hails from Fort Wayne, Ind., as the first and only journal in the world devoted strictly to the interests of the medical profession from a legal standpoint. Its pages will contain articles and reports of all late judicial decisions and legislative enactments affecting the practice of medicine; with original articles to classify and analyze the laws governing the practice of medicine and defining the physician's liability to state and patient. Published by the Physicians Defense Company; E. H. Merritt, Secretary.—Modern Medical Science.

The Medico-Legal Bulletin.—We are much pleased at the receipt of the first number of this new and unique journal. It is the first and only journal devoted to this very important subject. It is a monthly, and costs $1 per year. We commend it to all physicians as a most important addendum to their periodic literature. It is proposed to be up to date in all legal matters affecting the medical profession, and its first number gives ample evidence of the ability of its editor to make good this promise. It is to contain articles and reports of all late judicial decisions and legislative enactments affecting the practice of medicine. In a series of articles they will also attempt to classify and analyze the laws governing the practice of medicine and defining the physician's liability to the state and patient. While published by an assurance company, it is nevertheless the only publication of its kind, and yet so valuable that it should come to every doctor's table as regularly as issued.—The Medical Council.

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FEBRUARY 1903

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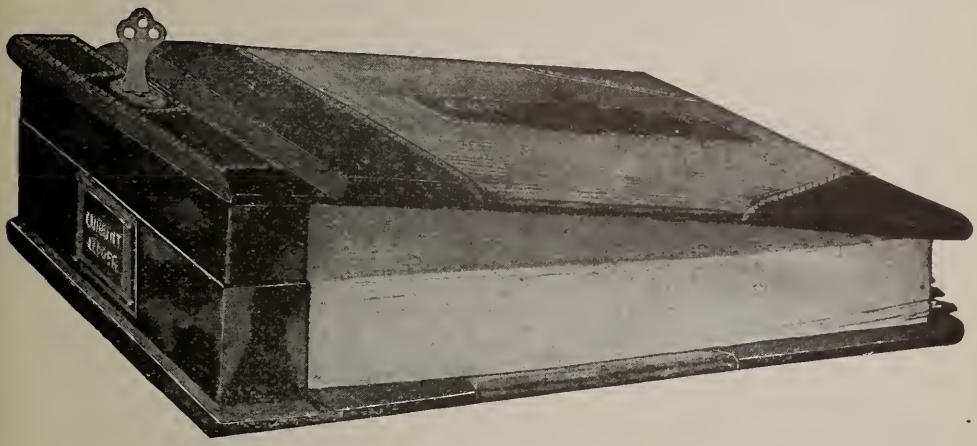

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I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions.

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THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expense of defending such suits not exceeding **FIVE THOUSAND DOLLARS** *in defense of any one suit, not exceeding in the aggregate* **TEN THOUSAND DOLLARS** *in defense of suits based on services rendered within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions hereinbelow stated, to wit:—*

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__.

A. F. Duchman.
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_____
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Medico-Legal Bulletin.

ORIGINAL ARTICLES

Magnetic Healing

The profession is considerably interested in the stand which is being taken by the law on the questions of healing by means other than medical treatment. Corporations are numerous over the country which advertise all sorts of treatments at great length and do an immense mail order business. Many of them are frauds upon the public, others are questionable, while others are so skillful in putting out their offers and treatments that they keep within the law. One of these corporations is the School of Magnetic Healing, doing business at Nevada, Mo. This concern was doing an immense business of "healing all diseases without medicine or surgery." They advertised extensively over the United States and Europe and had quantities of patients in distant cities and towns, who had answered these advertisements by letter. The school professed to cure any disease by a mysterious influence of the mind of the healer over that of the patient. This influence was supposed to be exercised at a certain hour of the day, when the patient was to dismiss all cares and thoughts of all kinds and make himself passive to receive the treatment.

The postmaster at Nevada considered that the use of the mail for this purpose was fraudulent and appealed to Postmaster General Smith for a ruling. The latter directed the postmaster to return all letters, whether registered or not, to the senders, with the word "fraudulent" stamped on the outside, with the exception that where there was nothing to indicate who the sender was, the letter was to be sent to the dead letter office, marked as the rest, "fraudulent." He also forbade the postmaster paying any postal money orders drawn to the order of the school or its people, and directed the return of the same to the remitters. The Nevada postmaster, of course, obeyed this order

and the schol brought suit in the United States Circuit Court against the postmaster, asking an injunction to restrain him from executing this order. The complaint alleged, among other things, that the "business is a legal and legitimate business, conducted according to business and legal methods, and is founded largely and almost exclusively on the physical and practical proposition that the mind of the human race is largely responsible for its ills, and is a perceptible factor in the treating, curing, benefiting and remedying thereof.

"And that the human race does possess the innate power, through proper exercise of the faculty of the brain and mind, to largely control and remedy the ills that humanity is heir to, and complainants discard ailments and eliminate from their treatment what is commonly known as divine healing and Christian Science, and complainants are confined to practical, scientific treatment emanating from the source aforesaid."

This is the substance of all that was said in the complaint as to the nature of the business done by the school. The balance of the complaint went on to show the quantity of mail and money orders which had accumulated in the postoffice under this order, and which the postmaster refused to deliver to the school, and to show the irretrievable wrong being done it. The defendant in this case, the title thereof being American School of Magnetic Healing vs. McAnnulty, demurred to the complaint on the ground (1) that the complainants had not stated any such case as entitled them to any relief; (2) because the complainants had not stated any ground for equitable relief against the defendant and had not shown any reason why an injunction should be granted. The Circuit Court sustained the demurrer and the complainants declined to amend their complaint further, so the court dismissed it at complainants' cost. They appealed to the United States Supreme Court and that court, in its opinion by Justice Peckham, reported in 187 U. S., 94, gave a strong decision in favor of the school and reversed the decree of the lower court dismissing the complaint.

The Supreme Court took the view that the defendant having by demurrer admitted for the purpose of argument the truth of the material facts plead in the complaint, therefore admitted that the school was founded on the proposition previously stated. This is the general rule in all pleading by demurrer and is true in any case. The question before the Supreme Court was not what the school was actually doing, but whether the business as set forth in the complaint was within the statutes of the United States. No evidence could be taken until an issue was formed,

so all the facts the court had before it were those mentioned. The statutes under consideration were Sections 3929 and 4041 of the Revised Satutes, as follows:

> "Sec. 3929. The postmaster-general may, upon evidence satisfactory to him that any person is engaged in conducting any fraudulent lottery, gift-enterprise, or scheme for the distribution of money or of any real or personal property, by lot, chance, or drawing of any kind, or in conducting any other scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any postoffices at which registered letters arrive directed to any such person, to return all such registered letters to the postmasters at the offices at which they were originally mailed, with the word 'fraudulent' plainly written or stamped upon the outside of such letters; and all such letters so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the postmaster-general may prescribe. But nothing contained in this title shall be so construed as to authorize any postmaster or other person to open any letter not addressed to himself."
>
> "Sec. 4041. The postmaster-general may, upon evidence satisfactory to him that any person is engaged in conducting any fraudulent lottery, gift-enterprise, or scheme for the distribution of money, or of any real or personal property, by lot, chance, or drawing of any kind, or in conducting any other scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations, promises, forbid the payment, by any postmaster, to any such person of any postal money order drawn to his order or in his favor, and may provide by regulations for the return to the remitter, of the sums named in such money orders. But this shall not authorize any person to open any letter not addressed to himself."

The Supreme Court held that these statutes were intended to cover only cases of actual fraud in fact, in regard to which opinion formed no basis. The fraud must be actually committed as evidenced by facts, not presumptions, and the postmaster general does not come within its intent when he decides the particular case to be a fraud on which there are differences of opinion as to the efficacy of what is claimed to be the nature of that

case. As applied to this case, the postmaster general would not be warranted by these sections in deciding that the claim of the complainants, as made in their complaint, that they were "able to effect cures by reason of working upon and affecting the mental powers of the individual and directing them towards the accomplishment of a cure of the disease under which he might be suffering," was a fraud or a false pretense or promise. The court said, "There is no exact standard of absolute truth by which to prove the assertion false or a fraud. * * * * As the effectiveness of almost any particular method of the treatment of disease is, to a more or less extent, a fruitful source of opinion, even though the great majority may be of one way of thinking, the efficacy of any special method is certainly not a matter for the decision of the postmaster general within these statutes relative to fraud." The meaning of the court is plain. There must be something more than mere opinion upon which to base the decision of fraud. There must be produced facts which show the exact nature of the business done before it can be declared a fraud within the statute. No other construction has ever been placed on this statute to our knowledge. It is certainly good law, notwithstanding its suggested interference with "the progress of civilization." The court, however, is careful to eliminate any doubt of the accuracy of its views by the conclusion to its opinion, which is as follows:

> "Without deciding, therefore, or expressing any opinion upon the various constitutional objections set out in the bill of complainants, but simply holding that the admitted facts show no violation of the statutes cited above, but an erroneous order given by the postmaster general to defendant, which the courts have the power to grant relief against, we are constrained to reverse the judgment of the Circuit Court, with instructions to overrule the defendant's demurrer to the amended bill, with leave to answer, and to grant a temporary injunction as applied for by complainants, and to take such further proceedings as may be proper and not inconsistent with this opinion. In overruling the demurrer we do not mean to preclude the defendant from showing on the trial, if he can, that the business of complainants as in fact conducted amounts to a violation of the statutes as herein construed."

This gives the defendant postmaster a right to answer the complaint and to set up the facts in regard to the actual business carried on by the school and then let the court determine whether

or not the business is within the statute so as to bar the school from using the mails. Until the case is finally decided the injunction placed against the postmaster holds and the school will be entitled to carry on its business unmolested for the brief time during which the defendant will be getting his answer on file, preparing his facts and trying his case. The ultimate result is foretold by the recent case of Weltmer, et al., vs. Bishop, decided by the Missouri Supreme Court about the time of the decision in the McAnnulty case.

In the case of Weltmer vs. Bishop, the defendant published an article in a newspaper in which he referred to the plaintiffs as "miserable charlatans." The plaintiffs considered this a libel upon their character and business and brought suit for damages against Bishop. This made it incumbent upon the defendant to prove the charge to escape punishment, as the truth of a libel always vindicates the originator of it. The defendant brought in every kind of evidence he could get together to show up the nature of the business, all of which the plaintiffs tried to disprove by their own testimony and that of their patients who claimed to have been cured. Between both sides the manner of conducting the business and the method of treatment was clearly laid open. The testimony showed that the school prepared to cure any form of disease through the influence of the mind healer, the only communication being by letter, in which the directions as to the time for being passive were given, so there would be no slip in point of time when the healer and the would-be-healed were giving and receiving, though it is doubtful if a failure to coincide in point of time would have made any material difference. The cure would certainly result anyway, we suppose. It was further shown that the patients treated in this manner numbered up into the thousands. Each patient answering the advertisement would send in a statement describing his malady and condition, and an employe, usually a typewriter, would receive the letter and answer it by copying and sending to him a stereotyped letter prepared by the plaintiffs for all who should apply for the mystical treatment. The presence of the healer was therefore not necessary at any time. In fact, the proofs showed that the healer at the hour he was supposed to be in Nevada exercising his powerful mind to heal his patients, was in Colorado on a vacation, yet the healing process never ceased. The employes carried it on for all the patients just as well without him. The healer could not explain this point satisfactorily, nor could he make a satisfactory explanation of his treatments at a stated hour when there was a difference between

the time at Nevada and that at more distant points. The absurdity of the matter was too clear.

Plaintiffs called a number of witnesses who testified that they had been cured by the treatment, and it was the instruction asked by the plaintiffs and given to the jury by the trial court based on this testimony which was the main ground for the appeal to the Supreme Court. This instruction was to the effect that the lawfulness of the business conducted by the plaintiffs was to be adjudged by considering the results, as the evidence disclosed them. The Supreme Court did not accede to this declaration of the law and said that courts are not such slaves to the forms of procedure as to surrender their own intelligence to an array of witnesses testifying to an impossibility. They are not required to give credence to a statement that would falsify well known laws of nature, though a cloud of witnesses swear to it. "We," the court continues, "recognize that in the realm of science much is yet undiscovered, and especially is this so in the science relating to diseases of the human system and their treatment. Different schools of medicine contend with each other on vital questions, and, as long as the contest continues with reason, it cannot be said that the right of either, as above the other, has been demonstrated. But if either school would convince us that it is right, or even that it is entitled to be recognized as a contestant, it must appeal to our intelligence, and discuss the subject on the basis of natural laws. If it cannot be discussed on that basis, there is nothing to discuss. If a man come into court claiming to possess supernatural powers, and bring with him witnesses who swear he has done for them that which we know is impossible, we are not required to believe such evidence. Here was a woman, who perhaps believed what she said, who testified that by a mental process of one of the parties suing, transmitted to her through a letter several hundred miles away, she was entirely cured of a cancer of the breast. The fact that the party who was supposed to have transmitted the influence from Nevada was not there at the time, adds to the absurdity of the statement. And the testimony of other witnesses, perhaps also sincere, to the effect that they were cured of otherwise incurable diseases by such mysterious process, can have absolutely no lodgment in our intelligence. Under the instruction above referred to, the jury were instructed to heed no such evidence, and if, on the whole, it showed that good had resulted to the community from the practices of the parties suing, the jury were to find that the business was a lawful one. It was an instruction, in effect, directing the jury to surrender their

own intelligence to the preponderance of statements of witnesses, irrational though such statements were."

This instruction is too often given by trial courts in negligence cases to be just. It is frequently given in malpractice cases as though the physician was an absolute guarantor of a cure. The juries are bound to decide when so instructed that if the results were bad he surely must be guilty of negligence. At best, results are only evidence of negligence, but never conclusive of it. So with this case, proof of cures sould be no more than evidence of possible lawfulness of the organization, subject to be disproved by the absurdity or impossibility of the treatment. The court considered that the evidence of plaintiffs was alone sufficient to show that they were not entitled to the benefit of the law of libel, and reversed the judgment. This means that the school is unlawful, and is a fraud upon the public. It has been coining money, without doubt, at the expense of the people, and it is high time it and similar organizations over the country were being closed up. They are a menace to the public.

This decision will certainly have the desired effect of closing up the Nevada school, for the Circuit Court of the United States, which tried the former case against the postmaster, will annul the injunction on an answer and proof following the facts in the libel case. If it is denied the use of the mails for its purposes, it cannot operate and will have to cease its existence, and if the facts are true, as they seem to be, it ought to cease doing business.

BILL REGULATING PROPRIETARY OR PATENT MEDICINES.

A bill has been introduced into the Pennsylvania Legislature which provides that any and all proprietary or patent medicines prepared, sold, or offered for sale in Pennsylvania shall contain upon a label a true and correct copy of the formula, ingredients or constitutents of the same, together with a true and correct printed statement in English of the several and respective quantities or proportions thereof. No person shall be employed or engaged in the manufacture and the mixture, compounding or preparation of any proprietary or patent medicine who is not a regular graduate in pharmacy and so registered under the laws of this state. Persons violating this act are liable to a fine of $1,000 and imprisonment of one year, or both, one-half the fine to go to the person furnishing the information.—American Medicine.

The Physicians Defense Company Legally Qualified in State of Iowa.

Fac-Simile of Certificate from the State Department and Copy of Letter from the Insurance Commissioner of Iowa.

The Physicians Guarantee Company on January 31, 1900, wrote to the Insurance Department of Iowa, requesting a ruling under the Iowa laws; would its business be construed as that of insurance? If so, would it come under the supervision of that Department? The following reply was received from the Auditor of State, F. F. Marriam, the Insurance Department being under his jurisdiction:

DES MOINES, Iowa, February 7, 1900.

Physicians Guarantee Company, Fort Wayne, Indiana.

Gentlemen: Replying to yours of January 31st, addressed to Hon. C. G. McCarthy. This letter was duly received, and I referred the same to the Attorney General for an opinion regarding the business as outlined in your letter. I herein enclose a copy of the Attorney General s opinion, which I trust will fully answer the questions as with reference to this Department.

Yours very truly,

FRANK E. MERRIAM,
Auditor of State.

The Attorney General's opinion is quite lengthy and contains the following statements relative to the question, is the company doing an insurance business.

"There can be no manner of doubt about the question. It has not the first element of an insurance company. The character of the business is not one of insurance. The statutes of Iowa provides for no insurance of that kind or anything like it. I have no hesitation in saying that the company should not be admitted to do business in this State as an insurance company."

Upon receipt of this ruling, and, after ascertaining that the laws governing foreign corporations did not prohibit or restrict this class of business, the company sent its agents into the State

and secured a large number of applications from physicians for contracts for defense in civil malpractice suits.

In August, 1901, a circular letter was sent out from the Auditor's office, addressed to the County Attorneys of the State requesting their co-operation in securing the arrest of agents of this company, and stating that the company had not complied with the insurance laws and were therefore illegally transacting business in Iowa. This letter further intimated that the agents of the company were misrepresenting the contract to the medical profession, by leading them to believe that the company would pay any judgment rendered against a contract-holder for malpractice. This action on the part of the Auditor's Department was, to say the least, neither honest nor fair, for an examination of the records of that office would prove that the company had been before the department and had received its ruling that the business had "not the first element of insurance; there can be no manner of doubt about the question; the character of the business is not one of insurance."

This action shows such a lack of system in the Department or knowledge of its affairs by its head as to indicate incompetency. If these letters were sent out for the purpose of injuring The Physicians Guarantee Company, it was without avail. The company has held practically all the business written in 1900 and 1901 and has added thereto many new contract-holders during the year 1902. The company was immediately informed of the action on the part of the Auditor's office by its contract-holders, who also furnished us with copies of the circular letters.

A representative of the company from the home office called on the Department and took up the matter in person. At first the Department denied that any ruling had even been given the company, or that the company had ever been before the Department, but when confronted with the original correspondence, tried to shift the responsibility to a clerk, but was forced to acknowledge that the clerk was authorized to issue such rulings.

When the company offered to comply with the insurance laws of Iowa, provided the Auditor would issue the company a certificate, or license, the Department was forced to admit that the insurance laws made no provision for a company of this character and therefore no permit could be granted by them.

The Physicians Guarantee Company was reincorporated in 1902, under the name of Physicians Defense Company, with the same officers, capital and reserve fund. The new company, desiring to open a number of local offices in the State of Iowa, presented on the twenty-fifth day of January, 1903, its papers to the

State Department and requested admission as a foreign corporation.

The papers were accepted and filed, permission granted the company to open local offices and a certificate issued on the twenty-sixth day of January.*

The company is not an insurance company in any sense of the word; it is not doing an insurance business, as it does not indemnify against loss; it is not organized under the insurance laws of its home state, Indiana. It is incorporated under the Voluntary Association Laws, for the purpose, as stated in its Articles of Association, "To aid and protect the medical profession in the practice of medicine and surgery by the defense of physicians and surgeons against civil prosecution for malpractice." The proposed plan of doing business is also stated in its Articles of Association, as follows: "The Association will issue to physicians and surgeons for stated and agreed compensation contracts by which it will undertake and agree to defend the holder of the contract at its own expense against any action brought against him for damages for alleged malpractice in relation to, or connection with, services performed within the time covered by the contract. But the Association shall not in any defense contract issued by it assume, or agree to assume, or pay any judgment for damages for malpractice rendered against the holder of such contract."

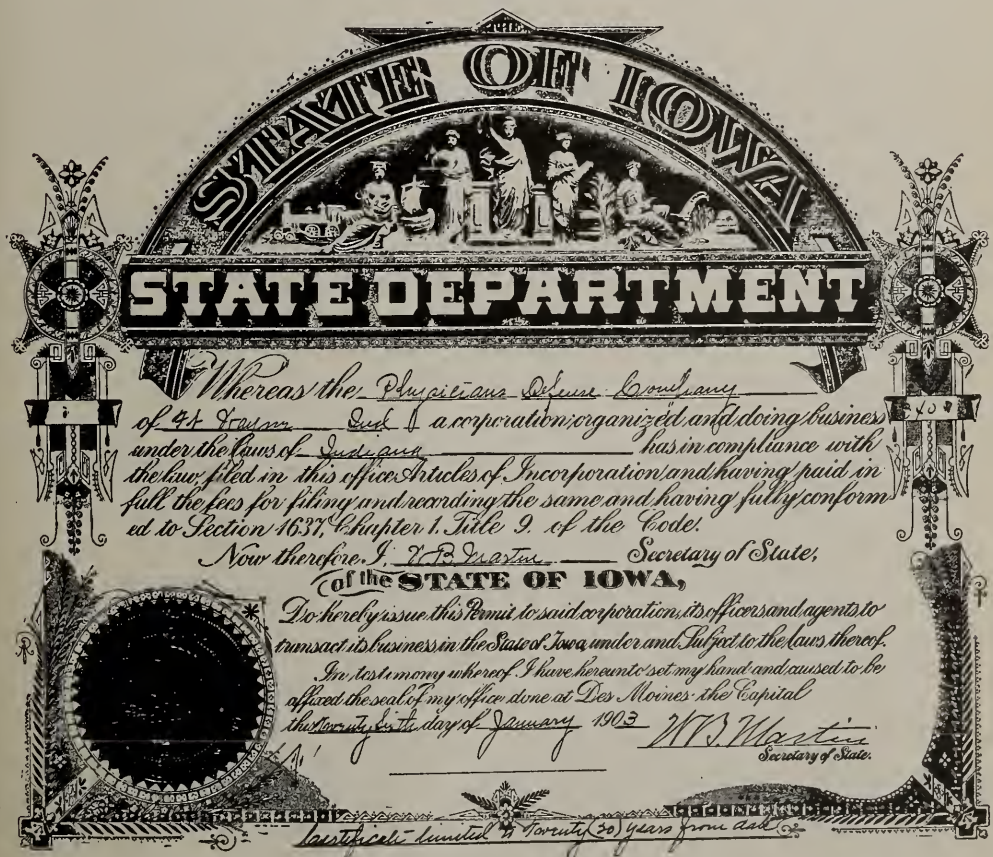
This is a contract for services, but not a contract for indemnity. It is such a contract as competent, careful practitioners want. They are not negligent, incompetent nor unskillful, hence are willing and ready to be held responsible for the results of their services. It is only the incompetent, the unskillful. the negligent and careless men in any profession who want indemnity—someone to stand for their errors and mistakes. To this class of men the Physicians Liability Policy issued by the Casualty Companies is prora et pupis, for, by the terms of the policy, the liability for the negligence, incompetence and unskillfulness of the physician is borne by another.

This is the distinguishing feature between insurance (Physicians Liability Policy), and defense (Physicians Defense Contract). In one case the incompetent practitioner is led to undertake operations and treatments for which he is neither qualified nor prepared, and for which a company must indemnify, if judgment is rendered against him. In the other case, the competent physician is defended through the various courts to a successful termination, his diagnosis treatment and operation vindicated.

This is all that he wants or needs. Furthermore, the Physicians Liability Policy is beginning to be held by the officials of many states as ultra licitum. They hold with us that all medical men should be held personally responsible for their work, and a policy which relieves them of this responsibility is against public policy.

From the foregoing it can be seen that the Physicians Defense Company is legally qualified to do business in Iowa as a foreign corporation; that it enjoyed the same right under the old name, Physicians Guarantee Company, except in so far as it could not establish local offices, but could solicit by traveling solicitors; that it could not be admitted as an insurance company, as there are no insurance laws providing for this class of business; that the Auditor of the state went out of his way and exceeded his duties in an attempt to do the company an injury.

Further, that any Casualty Company issuing a Physicians Liability Policy is doing so, not only contrary to public policy, but contrary to the laws of Iowa.


STATE OF IOWA

STATE DEPARTMENT

Whereas the Physicians Defense Company of Des Moines Iowa a corporation organized and doing business under the Laws of Indiana has in compliance with the law filed in this office Articles of Incorporation and having paid in full the fees for filing and recording the same and having fully conformed to Section 1637, Chapter 1, Title 9, of the Code.

Now therefore, I, W. B. Martin, Secretary of State, of the STATE OF IOWA,

Do hereby issue this Permit to said corporation, its officers and agents to transact its business in the State of Iowa, under and subject to the laws thereof.

In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of my office done at Des Moines the Capital this twenty-sixth day of January 1903

W. B. Martin
Secretary of State.

Countersigned

Certificate limited to Twenty (20) years from date

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I FEBRUARY 1903 No. 5

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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EDITORIAL NOTES

The Physicians Defense Company, as a rule, is not in the habit of exploiting in the columns of the Bulletin the results of the actions for damages for malpractice brought against its contract holders. We shall, however, in this instance, break over the rule and report the results of a suit brought against one of the best and most favorably known abdominal operators in the American profession.

We feel justified in doing this, as the result of the action substantiates the contract-holder's faith in our organization, as expressed in his own language:

> "Charges of malpractice can easily be made, and suits for the same can be easily brought by any one, whether actuated by ignorance, malice or covetousness. No surgeon exists who has not at some time or other been threatened with such suits, and the higher his standing the more frequently will these threats be made. Fortunately, however, most surgeons in this part of the country have learned to protect themselves by organized defense against these suits, so that they are put to no

loss of time or money in the conduct of their defense, and a surgeon who knows that he has been right in the conduct of his case has no anxiety as to the result."

On the twelfth day of January, 1901, there was filed in the Court of Common Pleas, Franklin County, Ohio, a petition by William H. Minser, administrator of the estate of Lydia Minser, deceased, against James F. Baldwin, M. D. The petition alleged malpractice on the part of the physician, in the following language:

"Plaintiff states that on the 12th day of December, 1900, Lida Minser, late of the County of Franklin, State of Ohio, died intestate; that on the 9th day of January, 1901, this plaintiff was appointed by the Probate Court of said county, as administrator of the estate of the said Lida Minser, deceased, and is now the duly qualified and acting administrator of such estate, and as such administrator brings this action.

"That at the times hereinafter mentioned, defendant was and now is a practicing physician and surgeon in Columbus, Ohio.

"That on the first day of December, 1900, said plaintiff employed said defendant as such physician and surgeon to operate on said Lida Minser for hemorrhoids; that said operation was performed on the 2nd day of December, 1900, at said defendant's private hospital in the city of Columbus, Ohio.

"That the defendant, within three days after said operation had been performed, and while said Lida Minser was yet in a weakend condition from the effects produced by said operation for hemorrhoids, said defendant, disregarding his duties as such physician and surgeon, falsely represented that he had discovered a tumor of unusually large proportions, and that it was necessary that the same be removed at once in order to preserve the life and health of said Lida Minser; that said Lida Minser protested against the operation for the removal of said tumor, as she was yet in a weakened condition from the effects produced by said first operation above mentioned, and requested that the operation for said tumor be delayed until said Lida Minser had recovered from the effects of said first operation for hemorrhoids.

"That said defendant, knowing the weakened condition of said Lida Minser, insisted that said operation for said tumor be performed at once, and at the instance

and request of said defendant, said Lida Minser, relying on the representations of said defendant as such physician and surgeon, consented that said operation for tumor be performed.

"That on the 8th day of December, 1900, said defendant performed said operation on said Lida Minser for the purpose of removing said tumor; that no tumor was found to exist by said defendant, but that said defendant maliciously and without authority from the said Lida Minser, or this plaintiff, disregarding his duty as such physician and surgeon, removed all the organs in the pelvic cavity of the said Lida Minser, consisting of the womb, the right and left ovaries and the right and left ovarian tubes; that the removal of said organs was not necessary in the performance of said operation nor to the restoration of health to said decedent.

"That by reason of defendant's reckless negligence in the premises, said Lida Minser, on the 12th day of December, 1900, died. That said Lida Minser leaves this plaintiff, Henry Minser, and her husband and only next kin, for whose benefit this action is brought, and that by reason of the aforesaid negligence and carelessness this plaintiff has been deprived of the association and companionship and assistance of his said wife to his damage in the sum of ten thousand dollars, for which sum he prays judgment."

The Physicians Defense Company, upon notification, immediately assumed charge of the case, and prepared for the defense of action. They, as per the terms of their contract, employed for Dr. Baldwin the firm of Nash & Lenz as local attorneys to act in conjunction with counsel from the home office of the company. The thoroughness of the preparation made for the defense of this action can best be set forth by copying the result of the trial, as printed in the Columbus Citizen, Columbus, Ohio, Jan. 22, 1903:

Judge Williams on Thursday morning allowed a nonsuit in the case of the estate of Mrs. William H. Minser against Dr. J. F. Baldwin for $10,000 damages for alleged malpractice. The effect of the action is to throw the case out of court, as it incidentally marks the close of one of the most bitterly fought cases which has been tried in the local courts for some time.

Mrs. Minser was operated upon by Dr. Baldwin on December 8, 1900, and died four days later. The Phy-

sicians Defense Company, a corporation of Fort Wayne, Ind., which defends physicians against damage suits, and with whom Dr. Baldwin held a contract, caused a post-mortem to be held at Chillicothe, the result showing that the operation had been skillfully performed.

Several questions important to the medical fraternity came up for decision during the course of the trial, which lasted nine days. The plaintiff endeavored to show that proper preparations had not been made for the operation and introduced a physician of the homeopathic school as evidence of the fact. The defense objected and Judge Williams sustained the objection on the grounds that a physician has a right to be tried by the rules of the school under which he practices. Dr. Baldwin being an allopath, was entitled to be judged from an allopathic standpoint.

Frank Monnett and Walter & Halterman represented the plaintiff, and Lenz and Addison and Harry P. Junk, who is state counsel for the Physicians Defense Company, the defendant.

The reading of the complaint in this action by one unfamiliar with the gross, exaggerated and baseless charges usually contained in a petition of this character, would incline one to the belief that the medical attendant had, to say the least, failed to furnish that care and attention which the case warranted. An examination of the hospital records and the operator's carefully kept history of the case shows that such is not a fact. It demonstrates that no mistake was made in the diagnosis; that no error occurred in the technique of the operation; that no experienced surgeon would have hesitated for a moment to advise or make the operation as performed; neither was there any attempt made to deceive the husband or any one else as to the operation in any particular; that Lydia Minser did not protest against the second operation for the removal of the tumor, but, in fact, complained bitterly and upbraided the surgeon for not having gone ahead and made the extended operation when she was under the influence of the anesthetic during the previous operation. It was explained to her that the contemplated operation was of too serious a nature to be undertaken without her full knowledge and consent.

The patient was directed to the hospital by her physician on account of hemorrhoids. The examination showed that these constituted only a small part of the trouble, but the entire pelvis was so tender that no satisfactory examination could be made.

After the patient had been placed under the influence of the anesthetic, a thorough examination was made by both the surgeon and her physician, and the diagnosis which was made at that time was found at the later operation to be exact in every particular. Two days after the first operation, which being very slight and accompanied by no loss of blood, the patient having fully recovered from the results of the anesthetic, and being anxious to have the ordeal over as soon as possible, the second operation was performed. Technically, the patient was suffering from double phosalpinx, with involvment in the inflamatory exudate of both ovaries and the appendix, with universal pelvic adhesions, and an infected and hyperplastic uterus.. The operation was successfully performed, every precaution being taken to guard against infection. The subsequent history of the case, and the findings at the autopsy show the results absolutely successful. The patient rallied from the shock of the operation, but died from a blood clot in the heart.

An autopsy was made at Hallsville, Ohio, by five of the leading physicians of Chillicothe. A copy of their findings is as follows:

> "On December 14, we, the undersigned, made a post-mortem examination of the dead body of Mrs. Henry Minser, at Hallsville, Ohio. We found an abdominal incision six inches long, closed by silk worm gut. On removing the sutures, the wound opened down to the muscular layer, which, with the peritomeum, had been closed with separate layers of catgut. The omentum was slightly congested and thickened at its lower end, and slightly adherent to the stump of the uterus, which had been amputated at the top of the cervix. Both ovaries and the tubes had been removed and the broad ligament tied off with catgut, well to the sides of the pelvis. The vermiform appendix was amputated, ligated about one inch from its base, and stitched to the caecum. There was no evidence of internal hemorrhage, except a slight oozing which was evident between the muscular layers muscular layer, which, with the peritoneum, had been to the stump of the uterus, where it had been sutured. Both kidneys were removed and found healthy. Without a complete autopsy the cause of death could not be determined. The operation had evidently been skillfully

done, and should not have caused death. Death was probably due to some cause outside of the field of operation.

"E. J. GALBRAITH,
"J. N. LESLIE,
"J. W. MAXWELL,
"R. D. ROBINSON,
"S. C. LIGHTNER."

Judge Williams took the case from the jury, and dismissing it, said: "The burden of proof rests with the plaintiff, who must show either negligence or the want of skill on the part of the operating physician or surgeon, and he could not see where the plaintiff had introduced even a scintilla of evidence to show that Dr. Baldwin had been either careless in his treatment of the patient or unskillful in the performance of the surgical operation."

This suit is but one of many which demonstrates that defense, as furnished by the Physicians Defense Company, is all that is necessary or desirable for "a surgeon who knows that he has been right in the conduct of his case." An organization which furnishes the funds, expert witnesses and qualified attorneys, contesting the case if necessary to the court of last resort, is one which should receive the endorsement and support of all competent practitioners. Certainly, if a physician is incompetent, unskillful or negligent, then indemnity is what he will seek. It is, however, beginning to be recognized that indemnity for malpractice in a physician is contrary to law in many states and against public policy throughout the country.

ALLEGED OPERATION WITHOUT CONSENT.

Suit has been brought by an aged Charlestown woman against Dr. Samuel J. Mixter, Boston, for $2,000 damages. The plaintiff alleges that Dr. Mixter operated on her without having obtained her consent, and that in consequence she has since continually suffered and will continue to suffer, besides having been put to great expense.—Exchange.

In the Municipal Civil court yesterday, Chief Justice Brown, a verdict was given for the defendant in the case of Mrs. Ann McDermott vs. Dr. Samuel J. Mixter. Mrs. McDermott sued to recover $2,000, alleging that she had been operated upon by Dr. Mixter without her consent.—Journal, Boston, February 3, 1903.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

MEDICAL LAWS OF MARYLAND.

For the fourth time in ten years the Legislature of Maryland has repealed old laws governing the practice of medicine and enacted new laws.

The act of 1902 retains the two separate examining boards, one representing the Medical and Chirurgical Faculty of the State of Maryland, and one representing the Maryland State Homeopathic Medical Society. No member of any medical college or university, who passes on the qualifications of graduates of any medical school, is eligible to serve as a member of either board. Each of the examining boards will prepare a schedule of written examination on anatomy, physiology, medical chemistry, surgery, practice of medicine, materia medica, therapeutics, obstetrics and pathology, and the same standard of excellence shall be required from all candidates. In the departments of therapeutics and practice, the question shall be in harmony with the tenets of the school selected by the candidate; the standard of requirements therein to be established by each board for itself. The examination must be fundamental in character. Hereafter a person desiring to practice medicine in Maryland must make a written application for license to the president of the board he may elect, accompanied by evidence as to good moral character, etc.; that he has obtained a competent common school education, and has either received a diploma conferring the degree of Doctor of Medicine from some legally incorporated college in the United States or a diploma or license conferring the full rights to practice all the branches of medicine and surgery in some foreign country; said diploma, if from a college in the United States, must have been conferred by a legally incorporated college requiring a four years' standard of education as defined by the

American Medical College Association or the Intercollegiate Committee of the American Institute of Homeopathy, respectively; provided, that this requirement shall not apply to any physician who shall, prior to the passage of this act, have practiced outside of this state for at least three years, and who shall have been duly registered or licensed in the place where he has so practiced; provided, further, that two courses of medical lectures, both of which shall be either begun or completed within the same calendar year, shall not satisfy the above requirements; provided, also, that in the case of students who at the time of the passage of this act shall be in their second year in a medical college, a three years' course of study, or attendance on three courses of lectures delivered in different years, shall satisfy said requirements. Proof of the qualification of applicants, as above, shall, if required, be made by affidavits at the time of the making of said application and payment of fee as provided. When the applicant shall have passed an examination satisfactory to the board, the president thereof shall grant to such applicant a license to practice. If the president of either board of medical examiners shall have refused any application, either for want of the qualifications necessary to entitle such applicant to an examination, as hereinbefore provided, or for want of proficiency of such applicant on being subjected to an examination, then the president of neither of said boards shall entertain or pass on a subsequent application from said applicant until after the expiration of six months from the rejection of said previous application. The respective boards are authorized to license, without examination, applicants who present proper certificates of proficiency and professional standing at the time of application, issued by boards of medical examiners of the District of Columbia and of other states, the requirements of which are of as high a standard as those governing the boards of medical examiners of Maryland, provided such boards of such states or districts grant the same privileges to licentiates of the examining boards of Maryland, such applicants, however, being still required to furnish the same proof of qualifications required of other applicants by this section. Medical students at the end of their second year of study, who have, as verified by the certificate of the dean of the college which they have attended, completed the studies of anatomy, physiology, medical chemistry and materia medica in said college, shall, on application, be examined in such studies by the state licensing board, the result of said examination to be considered as part of the final examamination, the full regular fee to be paid at this time, no part

thereof to be returned, but placed to their credit for the remainder of the examination yet to be taken. Medical students who have, as verified by the certificate of the dean of the college which they have attended, completed a full four-year course of studies and lectures, but who have not yet received their diplomas, shall, on application, be examined in the branches enumerated in Section 42 by the state licensing board, the final certificate and license of the said board being withheld until the diploma of the proper medical college, with the candidate's name inscribed, be produced to the secrecy of the board. Diplomas presented by graduates of foreign colleges shall be accepted if a course of four years' study has been required by said foreign college before issuing such diploma. Any physician who may change his residence from the District of Columbia to the State of Maryland, or who, while living in the District of Columbia, shall desire to practice medicine or surgery in the State of Maryland, shall, on application, be entitled to a license, without fee and without examination; provided, that the application be properly indorsed at the time it is presented by the examining board of the District of Columbia, certifying to the proficiency and professional standing of the applicant; and provided, further, that the examining board of the District of Columbia shall, under the laws thereof, grant like and equal privileges to licensed physicians of the State of Maryland. The examination fee is twenty dollars. Any person receiving a license shall file the same at once with the Clerk of the Circuit Court of the county in which he or she may reside, or with the Clerk of the Superior Court of Baltimore city, if said person shall reside therein. In case of a permanent removal of residence to another county or to Baltimore, the license, or a certified copy thereof, shall at once be filed with the Clerk of the Circuit Court of the county or city. Either board may, by a vote of five members, revoke any license which it has issued, and may cause the name of any physician licensed by said board to be removed from the register of the licentiates of the city or county where it may be recorded for any of the following causes: The use of fraud or deception in passing the examination, habitual drunkenness, criminal abortion, conviction of crime involving moral turpitude or unprofessional or dishonorable conduct. Before proceeding to revoke any such license, the person against whom complaint is made shall be furnished with a copy of the complaint and charges made against him, and shall be given an opportunity for a hearing before the board, in person or by attorney, and at such hearing testimony may be offered for and

against the accused. Any person shall be regarded as practicing medicine within the meaning of this act who shall operate on or prescribe for any ailment of another, or who shall append to his or her name the letters M. D., or prefix the word Doctor, or the abbreviation thereof, Dr., to his or her name, with the intent thereby to imply that he or she is a practitioner of medicine or surgery; but nothing herein contained shall be construed to apply to gratuitous services, nor to any resident or assistant resident physicians or students at hospitals in the discharge of their hospital or dispensary duties, or in the office of physicians, or to any physician or surgeon from another state, territory or district in which he resides when in actual consultation with a legal practitioner of this state; or to commissioned surgeons of the United States Army or Navy or Marine Hospital Service, or to chiropodists, or to midwives, or to masseurs or other manual manipulators who use no other means; nor shall the provisions of this article apply to physicians or surgeons residing on the borders of a neighboring state, and duly authorized under the laws thereof to practice medicine or surgery therein, whose practice extends into the limits of this state; provided, that such practitioners shall not open an office or appoint places to meet their patients or receive calls within the limits of this state without complying with the provisions of this act; provided, that the same privileges be accorded to licensed physicians of this state; provided, further, that nothing in this act shall annul any of the acts of the present dental law of the State of Maryland, nor shall apply to any registered graduate of dental surgery now practicing in the said State of Maryland, with the sign titles: Dentist, Surgeon Dentist, Dental Surgeon or Stomatologist.

VIOLATIONS OF LAW.

Ulderic St. Pierre, of Fall River, has been convicted for the third time of holding himself out to be a physician without being duly registered, and has been sentenced to pay a fine of $500 and to be imprisoned for five months.——George W. Bradley, of North Adams, who, it is alleged, purported to be a physician without having registered, was fined $100, the minimum penalty. He took an appeal.——Henry D. Noel, a "suggestive therapeutist" of Fall River, charged with practicing medicine without being duly registered, was fined $125, and in default of bonds, was confined in jail.—Exchange.

THE A. B. C. OF PHOTO-MICROGRAPHY.

By W. H. WAMSLEY.

(Tenant & Ward, New York. Cloth, $1.25.)

The author, a recognized authority on photo-micrography, has in this work presented a practical working manual. The subject is treated in a comprehensive yet simple manner. Being stripped of technical terms, it is within the reach of the mere tyro.

The illustrations and descriptions of instruments, especially their improvisation, are invaluable to workers of limited means. Methods in developing and printing are handled in a masterly way. Many short cuts of practical utility in manipulating the camera and in the dark room are presented. The reviewer has found many hints and aids applicable to ordinary camera work; in fact, the method of backing plates is alone worth the price of the book. The work should meet with a ready sale, not only among "micro workers," but the entire camera craft.

POST CHECK CURRENCY.

There is a measure before Congress to provide for the issuance of small notes in such form that they can with safety be remitted through the mails. A blank is provided on the notes, in which may be written the name and address of a payee, the bill thus becoming a draft on the government, payable only to the person named. The latter would be able to get a new bill at any postoffice where he could be identified, the old bill being forwarded to Washington and retired. The bill has received the endorsement of Postmaster General Payne; also Auditor Castle, of the Treasury Department. This is the most simple, safe and inexpensive method of remittance which has ever been devised and should be adopted by Congress. It will be of inestimable benefit to publishers and mail order dealers. The waste of time, as well as the expense, in purchasing a postoffice money order causes the loss of many subscriptions as well as sales which would be made, provided the remitter had a convenient and safe form of currency.

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MARCH 1903

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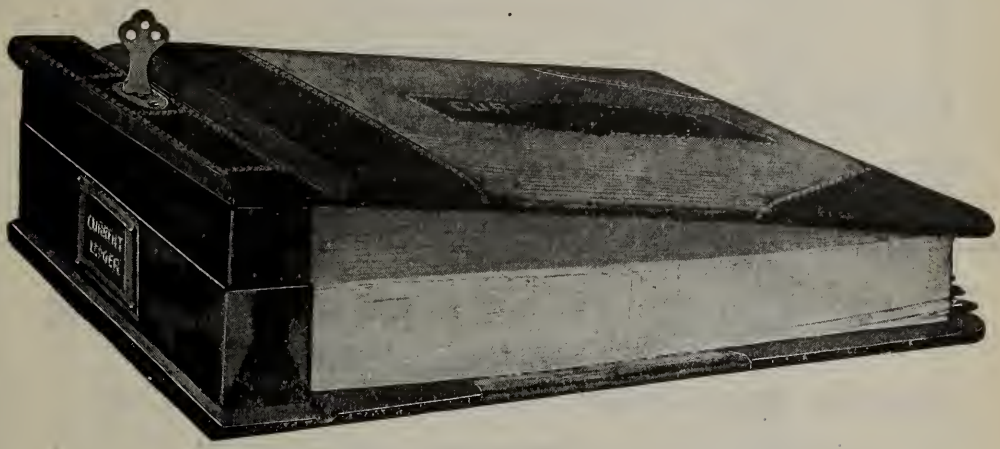

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If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

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THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract and to pay all the cost and expense of defending such suits not exceeding ***FIVE THOUSAND DOLLARS*** *in defense of any one suit not exceeding in the aggregate* ***TEN THOUSAND DOLLARS*** *in defense of suits based on services rendered within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated, to wit:—*

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190_.

A. F. Buchman,
President.

_____
Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

THE USE OF THE X-RAY PICTURE AS EVIDENCE OF INTERNAL CONDITIONS.

The X-ray is rapidly becoming an important factor in medical science. Its value as a means of diagnosis is well settled and its usefulness in the treatment of certain diseases is recognized, though in the latter particular its properties are yet more or less a matter of doubt. It has shown its value beyond dispute in determining internal conditions of the human body, such as the extent of a fracture, the location of a bullet and deformities of the inner body, and it becomes important from a legal point of view to know what value as evidence a picture showing such internal condition has.

The word **evidence** includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. The true question is not whether there is sufficient probability of its truth; that is, whether the facts are shown by competent or appropriate and satisfactory or sufficient evidence. If they are established by such evidence, they are said to be proved. What is satisfactory and competent evidence depends in each case upon the subject matter involved, with the underlying principle that nothing is competent and sufficient which does not refer to or grow out of that subject matter.

A witness's testimony, being an attempt to communicate to the court or jury the knowledge possessed by the witness, will usually employ the ordinary mode of expression—that of oral utterance in the language customary in judicial proceedings in the locality. But there are other modes of communication, and the need for resorting to them often arises. As to one and all of them, it is true that whatever mode of communication is employed presupposes a qualified witness as its testimonial support and cannot of itself have any standing independently of

that witness whose knowledge it serves to represent. Examples of this class are maps, models and photographs, none of which are receivable in evidence of themselves, but must enter as representing some witness's testimony in graphic form.

The X-ray picture is a photograph, and what is true of the photograph as generally understood should be true of the X-ray picture. So far as concerns the accuracy of the photographic process, it would be a mistake to credit it with a necessary correctness independent of human control, notwithstanding the Supreme Court of Georgia said in an old case that the sun was "a truthful and impartial witness." The conditions of the process can be so manipulated that the photograph is as false as the falsest witness; such as illustrated in articles in the Strand Magazine for February, 1895, and for May, June and July, 1898. But this is no reason for excluding the testimonial use of the photograph. It stands precisely on the same footing as the map or model. It is legitimate as a mode of communicating testimony in appropriate instances and it may be most helpful, but it equally requires and rests upon the credit of some witness.

The ordinary photograph is everywhere recognized as a permissible mode of testimony where appropriate. It has been received in proof of land, buildings, human beings and particular parts of the body when verified by some one, not necessarily the photographer, who has knowledge of the object represented and can testify that the photograph represents his idea of the object.

The X-ray photograph is taken of unexposed parts—parts that nothing else than an operation would expose—and the requirement that the witness verifying it must have knowledge of the object represented and that the photograph represents his idea of the object, cannot be fulfilled. The witness may have an idea of the probable condition of the parts photographed, but he cannot in most cases say that the photograph represents that condition as he saw it. He must be the one who took and developed the plate, or was a witness at the exposure and developing of the same, to be of the most value, for, unless he knew the plate and the print from it to be the result of the exposure of the particular subject to the X-rays, his testimony would be useless. By looking at the picture a witness would not be qualified to verify its truthful representation unless he saw it taken and could identify it as the one taken. Here is where the admissibility of ordinary photographs differs from the admissibility of the X-ray photograph. Any one familiar with the subject matter of the ordinary photograph can testify as to the truthfulness of the picture, no matter if he never saw the pic-

ture before; while with the X-ray photograph, no one ever saw the subject matter and the witnesses can only say that they took it or saw it taken and that it probably represents the condition of things. The opponents would hardly be in a position to contradict the testimony, for they could not produce the best evidence—the actual parts themselves. So that the X-ray photograph stands upon a peculiar footing. It is the best evidence attainable in the absence of an operation, and if it could be shown by the evidence of competent witnesses that it truly represents the object it is claimed to represent, its value is inestimable.

The acknowledge importance of this photograph in assisting proper diagnosis, and the many successful results based on X-ray diagnosis. has broadened the field of admissable photographs under the general rule we have been discussing. The courts now are leaning toward its admission in suitable cases, and it is rightly so; for in most cases where the X-ray photograph is used there is not better evidence obtainable, and it would be an abuse of discretion on the part of the court to deny its admission. The discretion of the trial judge is not absolute in this respect and may not be arbitrarily exercised. The recent case of Carlson vs. Benton, decided by the Supreme Court of Nebraska, is the latest authority on this subject. It establishes the rule that where the evidence as to the accuracy of the photograph leaves no room for a difference of opinion, it is wrong to exclude it on the ground that a sufficient foundation has not been laid—that is, that it was taken by a competent person; that the condition of the apparatus with which it was taken and the circumstances under which it was taken were such as to insure an accurate picture, and that competent witnesses can show that it truly represents the object it is claimed to represent. The courts in prior cases in the states of Nebraska, Washington, Ohio, Massachusetts and Wisconsin have admitted these pictures in evidence, and each one did so on the ground that no better evidence was available and that the pictures were properly explained and authenticated.

It is, therefore, certain that the radiograph has received the approbation of the law as a means of conveying information to the court or jury of conditions otherwise unascertainable. "New as this process is," says the Tennessee Supreme court in Bruce vs. Beall, "experiments made by scientific men, as shown by this record, have demonstrated its power to reveal to the natural eye the entire structure of the human body, and that its various parts can be photographed as its exterior surface has been and now is. And no sound reason was assigned at the bar

why a civil court should not avail itself of this invention, when it was apparent that it would serve to throw light on the matter in controversy." Every surgeon can well afford to protect himself in all doubtful cases by the use of the rays and thus save himself from what may prove to be a serious difficulty. The use of the X-ray is still in its infancy, but it is widening out rapidly. The law will keep abreast of this advancement and expand with it, and we will soon have a highly valuable piece of documentary evidence which will carry conviction with it and make it of great value in the damage suit against the physician and surgeon for malpractice.

LEGISLATION CONCERNING THE DISPOSITION OF DEAD HUMAN BODIES.

Owing to the numerous grave robberies which have occurred in the state during the past year, the Indiana Legislature has enacted a law, approved on February 25th, which requires all unclaimed bodies, regardless of the counties in which death occurs, to be reported to an anatomical board, and upon payment of the expenses of shipment by the Medical colleges, they may be used for dissection purposes. It is quite an interesting piece of legislation, so we quote the bill in full:

A BILL for an act for the promotion of anatomical science and to prevent the desecration of graves, prescribing penalties for the violation thereof, repealing all laws in conflict therewith, and declaring an emergency.

Section 1. Be it enacted by the General Assembly of the State of Indiana, that there shall be, and is hereby created a board for the control of the dead human bodies hereinafter described and for the distribution of such bodies among and to the schools and colleges in this state conferring the degree of doctor of medicine or doctor of dental surgery, or both; said board shall be known as the State Anatomical Board and shall consist of the president of the State Board of Health, ex-officio, who shall act as chairman of said board, and one representative from each of the Medical schools and colleges in this state, which are now and may hereafter become incorporated under the laws of this state, actually engaged in teaching, to be selected by and from the faculty thereof in accordance with the by-laws of such faculty. Said president of the said board of health shall call a meeting of said anatomical board for organization at a time to be fixed by him in the City of Indianapolis as soon as practicable after the passage of this act. Said anatomical

board shall have full power to establish rules and regulations for its government and to appoint and remove proper officers and agents, and shall keep full and complete records of its transactions and of all material facts pertaining to the receipt and distribution of bodies. Said records shall be open at all times to the inspection by any member of said anatomical board and by any prosecuting attorney of any county within this state.

Section 2. It shall be the duty of every public officer, agent and servant, and every officer, agent and servant of any and every county, township, city, town, village, or other municipality, and of any and every almshouse, poorhouse, prison, morgue, hospital, asylum, jail, lockup, stationhouse, workhouse or other public institution and of any and every charitable or benevolent institution supported in whole or in part at the public expense, having in his or their possession, charge or control the dead body of any person not claimed by any relative or legal representative, as hereinafter provided, and which may be required to be buried at public expense or the expense of any one of such public institutions excepting only the dead bodies of such persons as shall have died with smallpox, diphtheria, or scarlet fever, and they are hereby required to notify said anatomical board or such person as may be designated by the said board or its duly authorized officer or agent, whenever any such body or bodies come to his or their possession, charge or control, for burial at public expense, or the expense of any one of such institutions. And every such officer, agent and servant, shall, upon application by said anatomical board or its agent, without fee or reward, deliver such body to said board and permit said board and its agents and the schools and colleges, physicians and surgeons from time to time designated by them, who may comply with the provisions of this act, to take and remove the same. The notice aforesaid shall be given in writing and forwarded to said anatomical board within twenty-four hours after said officer, agent or servant comes into possession, charge or control of such body for burial, and shall include such material information as said anatomical board may designate. But no such body shall be delivered if, within the time specified above and before actual delivery, any person claiming to be and satisfying the officer in charge of such body that he is a relative of the deceased, or a duly authorized representative thereof, shall claim the said body for burial, but it shall be surrendered for interment; or if the deceased person was a traveler who died suddenly, except said traveler belong to that class commonly known as tramps, the said body shall be buried.

Section 3. The said anatomical board, or its agent, may take and receive the bodies reported to it as aforesaid, and shall distribute and deliver such as are received among and to such schools and colleges, physicians and surgeons entitled thereto, as request in writing to receive the same, preference being given in such distribution to the incorporated schools and colleges. Each school and college shall receive annually, as nearly as may be practicable, such proportion of the entire number of bodies distributed as the number of bona fide students enrolled and in regular attendance at such school or college bears to the total number of bona fide students so enrolled and in attendance, and engaged, bona fide, at all such schools and colleges. The secretary, dean, or other proper officer of each such schools and colleges shall report to said anatomical board the names of all such students in attendance at such schol or college at such times and in such form as said board may direct. All bodies shall be delivered among such schools and colleges in regular order, so as to maintain, as nearly as may be practicable, an equitable allotment at all times; and bodies assigned to any school or college in regular order and refused by such school or college without sufficient cause, shall be charged against the quota of such school or college in such manner as not to prejudice any other school or college. Said anatomical board shall take receipt by name, or, if the name be unknown, by a description, for each body delivered; all receipts so obtained by said board shall be properly filed byt it, and instead of receiving and delivering said bodies themselves, or through their agents, or servants, the said anatomical board may, from time to time, either directly or by their authorized officer, or agent, designate schools or colleges, or physicians or surgeons, who shall receive them, and the number which each shall receive. and provided for this purpose, such dead body shall be held subject to their order in the county where the death occurs for a period of not less than twenty-four hours after notice. Nothing in this act contained shall be construed to prevent a duly incorporated medical or dental college, or any duly licensed physician or surgeon, from acquiring by gift or otherwise, from persons having lawful authority to dispose of the same, the dead body of any human being for the purpose of post-mortem examinations, dissection or other scientific use.

Section 4. No school, college, physician or surgeon shall be allowed or permitted to receive any such body or bodies until a bond shall have been given to the state by such physician or surgeon, or by or in behalf of any such school or college or

incorporated medical association, to be approved by the clerk of the Circuit court in and for the county in which said physician or surgeon shall reside, or in which such school or college or incorporated medical association may be situate, and to be filed in the office of said clerk, which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon, or the said school or college, shall receive thereafter shall be used only for the promotion of the science and art of medicine and of dentistry, and that the record containing descriptions of deceased bodies shall be preserved from loss.

Section 5. It shall be the duty of every medical school or college and every such physician and surgeon in this state to keep in a suitable book provided for that purpose, a record of all such bodies received by such school or college, or incorporated medical association, or by such physician or surgeon, in which book shall be plainly entered the name by which such deceased person was known in life, if the same is known, and a description of and any distinguishing marks upon such body, and the institution or officers from whom said body was received; and the date of death, if same be known, and the time the body was received, which book shall be at all times subject to the inspection of any members of the said anatomical board, or the prosecuting attorney of any county in this state.

Section 6. It shall be the duty of each and every officer, agent and employe of every school and college, and of every physician and surgeon, receiving bodies under the provisions of this act, to see that such bodies are used in the State of Indiana, and for the promotion of the science and art of medicine and of dentistry, and for no other purpose whatsoever, and that after being so used, the remains thereof are disposed of in accordance with law.

Section 7. That any person who shall, in the State of Indiana, sell or buy any body aforesaid, or in any way traffic therewith, or transmit or convey any such body to any place outside of said state, or cause or procure any such body to be so transmitted or conveyed, or who shall in said state disturb or remove, without legal permit, any body from any grave or vault, or who shall knowingly aid in concealing any such dead human body or any part thereof so unlawfully taken, or who shall buy or receive by gift or otherwise any such dead human body so unlawfully taken, knowing the same to have been disinterred and removed from its place of burial, or otherwise taken and removed in violation of this act, shall be deemed guilty of a felony and

upon conviction thereof, shall be punished by imprisonment in the state prison for not less than three, nor more than ten years.

Section 8. When any such dead body so unlawfully taken for the purposes of dissection shall be received or found in any building or rooms of any such school or college, it shall, for the purposes of this act, and of any prosecution thereunder, be deemed and taken to be in the possession of the demonstrator of anatomy of such school or college, unless the contrary is made to appear.

Section 9. Neither the state, nor any county or municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body, but all expenses of such delivery and distribution, and of such anatomical board, shall be paid by those receiving the bodies, in such manner as may be specified by said anatomical board and by such school in proportion to the number of bodies which it has received; and no school which has failed or refused to pay its just proportion of such expenses as determined by said anatomical board, shall be allowed to receive any body or bodies, or parts thereof, while the amount so due remains unpaid.

Section 10. That any person having duties enjoined upon him by the provisions of this act who shall neglect, refuse or omit to perform the same as hereby required, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be liable to a fine of not less than one hundred dollars nor more than five hundred dollars for each offense, or imprisonment for a term not exceeding one year.

Section 11. All laws and parts of laws within the purview of this act, are hereby repealed.

Section 12. Inasmuch as an emergency exists, this act shall take effect and be in force from and after its passage.

It is thus seen that the anatomical board is given complete control of the unclaimed dead, to dispose of the same as directed. It has jurisdiction throughout the state and no unclaimed body can be disposed of in any way except as provided. The law has no reference to a body brought in from an outside state, and the colleges and schools are still free to get in a foreign state all the cadavers they can, by whatever means possible. The prime object of the bill is to prevent colleges and schools from buying bodies promiscuously over the state and to prevent grave robbery in the state. How far it will do that remains to be seen after the law is once in operation.

An act similar in scope was passed last April by Congress for the District of Columbia. It provides an anatomical board, composed of the health officer of the District and two representa-

tives from each school in the District conferring the degree of doctor of medicine or dental surgery, or both. It gives the board complete control of all dead human bodies which require burial at public expense, and provides for the delivery of such bodies to the medical and dental schools in the District applying for them. Notice is sent to the board by the person or institution having the custody of the body and the body is turned over to the school directed by the board, the method of equalizing the distribution being used as that provided by the Indiana bill. The preventative to such delivery is when the deceased person during his last illness, without suggestion or solicitation, requested to be buried or cremated, or when, within the time specified for holding the body, and before the actual delivery thereof, any person claiming to be and satisfying the officer in charge of such body, that he is of kin or related by marriage to the deceased, shall claim the same for burial or cremation. A bond of two hundred dollars from the colleges is demanded, with the exception of the medical schools of the United States Army and Navy, conditioned that all bodies are to be used in the District only. Penalties are provided for trafficing with bodies or for robbing graves at one hundred dollars, or imprisonment for one year in the workhouse.

The object of this congressional act is the same as that which prompted the later Indiana bill. It retains all unclaimed bodies within the District for medical and dental study only by the students of the various medical and dental colleges therein, and prevents trafficing with dead bodies and the robbing of graves in the District. In 1902, since the taking effect of this act in the District of olumbia, six bodies were turned over to the anatomical board for distribution. No one institution got them all, but they were proportioned around among the several colleges of the District. It is therefore impossible for the larger institutions to accumulate bodies turned over by the District to the detriment of the smaller colleges.

These laws are certainly equitable ones in the point of distribuition and can work no harm, but ought to do much good if enforced. The penalties provided for disobedience of officers is a check upon their conduct, and the penalties annexed to disobedience of the colleges and persons in procuring and using cadavers is a preventative of desecration of the dead, and ought to be enforced.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I MARCH 1903 No. 6

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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EDITORIAL NOTES

MEDICAL ADVERTISEMENTS IN THE RELIGIOUS PRESS AND DAILY NEWSPAPERS.

It is certainly most encouraging to the honorable and ethical practitioner to note, even though it may be slight, any change for the better in "proprietary" and "quack" medical advertising.

The following announcement was sent out in January by Mr. A. E. Dunn, advertising manager of all the Methodist Episcopal papers in the United States:

> "On the first of January the Methodists will enter upon a new departure. No advertisements of a medical nature will be accepted for our columns. We propose to exclude all of this class of advertising and will only carry out such contracts as may be in force at that time. The contracts, after having expired, will not be renewed at any price. We feel that the religious paper ought to be the medium that would have nothing but the most desirable and reliable advertisements in its columns and therefore we will take this course, which, as a financial venture, may possibly be a losing one to us for the time

being, but it is our opinion that advertisers who remain with us will be so much benefited that they will be disposed to increase their space and renew their contracts, and many advertisers that we do not now have in our columns will come to us when they know that there is nothing but the most desirable advertising accepted for our publications."

This is most certainly a commendable move on the part of the Methodist press and should receive the support and endorsement of the medical profession. As a rule, "money talks and has the best of the argument" in the advertising departments of both the religious and daily press. The management retire behind the statement that "the paper assumes no responsibility for the reliability of the representations in any of its advertising." Assuming that these advertisements interfere with and diminish the practice of physicians, they consider them impartial censors. Legally the publishers cannot be held responsible for promoting and abetting what they must know to be a fraud. The advertising columns are filled, and the reading matter copiously interspersed (at extra price) with announcements of alleged "gonorrhoea cure," "rubber goods carried," "monthly regulators," "woman's safeguard," etc. These remedies are either one of two things—harmless and impotent, making them frauds and humbugs, or, if efficacious, then they are criminal, and the paper containing the advertisement is morally aiding and abetting a fraud or criminal act, as the price of the advertisement is a division of funds obtained by fraud and misrepresentation or connivance in criminal acts.

To prohibit advertising of this character, a bill has recently been introduced in the New York State Legislature which provides that "No representation concerning either the merits or demerits of qualities of any patent medicine or medical preparation distributed for public sale, shall be posted, published or circulated unless the same shall previously be examined, approved and certified by the local board of health. Furthermore, each such certificate must be filed in the office of the clerk of the county in which the city, town or village is located, and shall not be valid save for one year." Although we do not believe that the bill will pass the Legislature, still it is a move along lines that will eventually work out for the good of the entire country as well as the medical profession. The suppression of "quack" advertising both of medicine and practitioners will do more for the practical benefit of the profession than any other form of legislation.

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

WHEN IS A SPECIALIST A SPECIALIST?

In the malpractice suit of Baker vs. Hancock, the Appellate Court of Indiana has defined what is understood as a specialist. The court holds that the skill required by a specialist is greater than that which must be possessed by a general practitioner. It says that a physician is such whenever he acquires sufficient learning to be trusted with a license to practice medicine and it is legally practiced. As to when a physician becomes a specialist, the court holds that it is a question of fact. The party may, or may not, have qualified himself as a specialist. Whether he had done so was a matter within his own knowledge, and primarily for his own determination. Having arrived at the conclusion that he possessed such qualifications, it still remained with him whether he would hold himself out and receive and treat patients on the basis of it. When he determines to do this, and does it, it then becomes his duty to exercise that degree of skill which he represents himself as possessing. To relieve one practicing medicine under such circumstances of responsibility commensurate with the pretension by which patients are secured and compensation fixed, would be to give ignorant practitioners license to defraud and to place innocent patients at their mercy.

SALARY ONLY RECOVERABLE BY HEALTH OFFICER.

As the Supreme court of Mississippi describes it, the case of Yandell vs. Madison county was brought by a physician, as health officer of the county, to recover upon a quantum meruit, or as much as he deserved, namely, the sum of $892, for medical services rendered to the residents of that county. To the several counts or different statements of his claim, three in number, all of like character, he attached a bill of particulars, containing about ninety-three items, one of which items will serve to illus-

trate all the others, was as follows: "1901, Jan. 14. To visit Jesse Samuel (smallpox), $15.00." To his declaration, or entire pleading, a demurrer was sustained, when he filed an amended account in quantum meruit also, but for $800. In the amended declaration no mention was made of the services performed, but it is alleged for the year 1900 his predecessor in office had received at the rate of $500.00 per annum, which had been fixed at that sum by the board of supervisors, and that his (Yandell's) services were worth more than the services of his predecessor. His amended declaration further alleged that the board for the year 1901 had fixed the health officer's salary at $100 per annum, but it made no use of that fact except to ignore it. In truth, all the counts ignored the fact that his compensation was a salary, to be fixed by the board, and sought to recover on a quantum meruit for special services to sick persons within the county. The court thinks that a demurrer was rightly sustained to all the counts, because the physician could claim against the county his salary only, whatever that might be; and for such recovery neither of his counts was a suitable pleading.—Mississippi Medical Record.

VERDICT FOR A PHYSICIAN.

Dr. George D. Head, of Minneapolis, has accomplished a bit of heroism that will be of great benefit to his professional brother. He had the temerity to sue a corporation which was insured against accidents to its employees. His first suit was successful in the Municipal court. The company carried the case to the Supreme court and met defeat.

The facts in the case are as follows:

The American Bridge Company was building a steel elevator, and in the course of construction eight employees were injured. The men were sent to Dr. Head by a bookkeeper, who also had charge of the casualties.

The doctor sent in his bill, a very modest one, sixty-three dollars, and was directed to send it to the attorney for the Travelers' Insurance Company, who claimed that his company was liable for first aid only. The bill was divided. The insurance company paid thirty-three dollars, and informed the doctor he must collect the balance from the Bridge Company or the men who were injured. The Bridge Company claimed their agent had no authority to hire more than first aid only, but the testimony showed that Dr. Head did not know the agent was re-

stricted in his authority until long after said service was performed.

The Supreme court decided the case, and established the following rule as far as this state is concerned:

If a physician is summoned to attend an injured person, by another having authority from his principal to hire the first aid services only, and nothing is said about his authority being limited, and the physician is unaware of such limits, the agent binds the principal to pay, not only for the first aid, or initial service, but for the subsequent service as well.

This rule is a valuable one for doctors who are engaged by insurance companies that protect corporations from casualties. If the doctor is informed at the time that he will be paid for first aid only, he will make some definite arrangements for the payment of subsequent services.

In all probability there will be hereafter an adjustment of claims by corporations and insurance companies, and corporations will not pay large premiums to protect themselves without looking after the welfare of their employees after the initial injury.

Although the suit may not make it possible to collect large or even reasonable fees for surgeons, it will do something toward the elevation of service and a more rational compensation.

Heretofore companies have belittled the services of the physician. The successful issue of this suit should stimulate men to charge more for their services and collect them—if necessary, by law.—Northwestern Lancet.

CELEBRATED CASE DECIDED—DRS. HARRIS, WILLIAMSON AND LEECH HELD GUILTLESS BY HIGH COURT.

Albany, Texas, Feb. 26.—The celebrated cases of Drs. C. H. Harris, J. L. Williamson and Arthur Leech, charged with disinterring the body of Thomas, of Stephens county, for the purpose of discovering the character of the disease which caused his death, was decided by the Criminal Court of Appeals at Dallas on the 25th inst., said court reversing and dismissing the said cases. There is nothing in the Criminal Court reports of the state similar to it, and the present Criminal Court of Appeals has made law bearing upon the subject.

These doctors are among the most prominent in this section of the country, have large practices and have the respect of the people among whom they reside. The decision of the court will be read with much interest throughout the state as soon as published.—News.

NON-SUIT ALLOWED BY JUDGE WILLIAMS IN DAMAGE CASE BROUGHT AGAINST LOCAL PHYSICIANS.

Judge Williams on Wednesday morning allowed a motion for non-suit in the case of Milton S. Garner against Drs. Wood and Hunt. Garner is a painter and paper hanger, and on August 13, 1900, fell from a stepladder, dislocating his shoulder and fracturing his right arm.

His injuries were dressed by the physicians, but subsequently he practically lost the use of the arm. Suit was instituted against the doctors for $10,000. The jury was impanelled last week, but proceedings were stopped on account of the illness of Attorney Paul Jones.

Drs. Wood and Hunt were represented by the Physicians Defense Company, which is represented locally by H. P. Junk and Lenz & Addison. They moved a non-suit after the plaintiff had submitted his evidence, on the grounds that the testimony did not show that the physicians had not used ordinary diligence, and that the injuries did not reveal that the physicians had not acted properly under the circumstances.

This is the second case of the same nature which has been non-suited within the past month (by the Physicians Defense Company), Dr. Baldwin being the defendant in the other.—Columbus Citizen, Columbus, Ohio, March 11, 1903.

CONTAGION OF SCARLET FEVER CAUSES DAMAGE SUIT.

A peculiar suit has been filed in the Circuit court (Indianapolis, Ind.) A man named Miller alleges that another named Harbison gave his children scarlet fever. Nearly two years ago Harbison's children had scarlet fever. At the time of the greatest virulence of the disease the defendant, it is charged, entered the Miller house. He was told to leave, but the injury had been done. The complaint alleges that Harbison "assaulted, contaminated and inoculated" the Miller children with the disease. The three became sick. There are two paragraphs in each of these complaints, alleging general negligence and wilful negligence. Two thousand dollars is asked in the first paragraph in each case, and $3,000 in each of the second paragraphs. The father sues in three paragraphs: For a recovery of medical expense, for the loss of the services of his children and for trespass. The total judgment he asked is $8,300.—Medical and Surgical Monitor.

RESPONSIBILITY FOR DEATH UNDER AN OPERATION.

A decision which will be regarded with a great deal of interest by members of the medical profession was handed down on February 11th by the Appellate division of the Supreme court in the suit of Alice Wood, as administratrix of the esate of Robert Wood, against Dr. John A. Wyeth and Dr. W. H. Landon White, both well known city physicians and surgeons. The suit was brought under the provisions of section 1902, of the Code of Civil Procedure, to recover damages for the alleged negligent treatment of a boy named Robert Wood by the defendants as physicians and surgeons, resulting in his death. The plaintiff contended that the child died while under the influence of chloroform carelessly administered. The trial of the action resulted in a verdict in favor of Dr. White, but the jury disagreed as to Dr. Wyeth, and the trial justice finally dismissed the complaint upon the merits as to the latter. A motion by the plaintiff for a new trial was denied, and counsel for the administratrix took an appeal to the Appellate division. The judgment and orders have now been reversed and a new trial granted on the ground that the trial court was right in leaving the case to the jury, and erred in subsequently dismissing the complaint, after the jury failed to agree. The judgment, however, is rendered by a divided court, Justices Bartlett, Hirschberg and Jenks agreeing on the question of the propriety of the reversal, Justice John Woodward and Presiding Justice W. W. Goodrich dissenting.—New York Medical Journal.

HOSPITAL SUED.

The Woman's Hospital, Philadelphia, is made defendant in a suit brought by Miss Vera Anderson to recover $5,000 damiages alleged to have been sustained when a patient in the institution. She affirms that, while undergoing an operation for tumor, and while under an anesthetic, portions of skin, without her consent, were removed from her body and grafted on another person. The latter procedure is made the ground for suit.—Exchange.

The Physicians Defense Company of Fort Wayne, Indiana, is doing some splendid work in protecting physicians from malpractice suits. The purpose of the company is to put up a strong defense and not to pay judgments. Every suit this company wins benefits the whole profession.—Wisconsin Medical Record.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

The twelfth annual report of the State Board of Medical Examiners of New Jersey gives considerable space to the discussion of reciprocity in the matter of licentiates from other states. Medical reciprocity between New Jersey and other states, whereby the examining board of one state endorses other licentiates in lieu of their own examination, has been tried on the one hand and the individual merit of the applicant or endorsement has been tried on the other, and the latter has been found by far the most satisfactory to the present board of managers, and the mutual reciprocity system has been entirely abandoned. The report states that after wide experience and much consideration the board has adopted as a basis of endorsement the personal fitness and professional qualifications of the candidate, plus a state certificate of license, issued after examination in substantially the same medical branches and under essentially the same conditions as the law of the state and the regulations of its board require. Equally as high qualifications and as full compliance of the law are required of candidates for endorsement as of candidates for examination. This system could not prevail under the mutual reciprocity system, hence the abandonment of the latter. The five conditions of endorsement relating to the moral character of the applicant, the academic education, medical training, nature and extent of the state examination, and average attained, are fully set forth. According to the present report licentiates were endorsed who represented twenty-six colleges and eight state examining boards.—Exchange.

A bill has been introduced into the Missouri Legislature providing for the appointment of three separate medical examining boards by the governor, one to represent the regular practioners, one the eclectic and one the homeopathic school.

LICENSING NURSES.

A bill has been passed in the Illinois Legislature providing for the examining and licensing of trained nurses by the State Board of Health. A movement is on foot among the nurses of Massachusetts to secure the enactment of a similar measure, while, as has already been recorded, two bills providing for the registration of nurses have been introduced in the Legislature of the state of New York. Of the bills which have been introduced in the New York Legislature, that known as the Armstrong bill seems to be the one which has the support of the organized nurses, who state that under this measure only those nurses can be registered who have really had adequate training, which is not the case under the Nye bill, which would permit promiscuous registration.—Exchange.

THE MICHIGAN BOARD OF REGISTRATION.

The annual report of the Michigan State Board of Registration in Medicine has added the following names to its list of approved colleges: The Universities of Virginia and Nashville, Memphis Hospital, Pulte Medical College of Cincinnati, Medical College of Ohio, Tufts Medical College. The board recommends that the law be amended so as to require all candidates for examination to be graduates in good standing of legally authorized and reputable medical colleges, approved and listed by the board.—Exchange.

BILL FOR AN OREGON STATE BOARD OF HEALTH.

Senator Andrew C. Smith, of Portland, after full consultation with the Medical societies, and extensive correspondence with the members of the professicn all over the state, has prepard and introduced an admirable bill providing for the greatest present need of Oregon, an efficient board of health. The bill was introduced on the opening day of the Senate, standing nearly at the head of the calendar, and has been referred to the committee on medicine and surgery. As this committee consists of three members, all doctors, all Smiths and all good fellows—Dr. C. J. Smith, of Pendleton; Dr. Tyler W. Smith, of Sheridan, and the introducer of the bill—it ought to be fairly safe of a prompt and favorable report—Medical Sentinel.

Legislation.

THE MEDICAL PROFESSION AND THE LEGISLATURE.

The anatomy bill has passed the Legislature and was signed by Governor Durbin, February 26th, and is now the law. It is entitled, "An act to promote anatomical science and to prevent the desecration of graves," and declares an emergency. It may be read in the January issue of this Journal, pages 312-15. It is modeled after the laws of various Eastern states, and was arranged by Mr. Harold Taylor, lecturer on medical jurisprudence and attorney for the Medical College of Indiana. It was agreed to and worked for by all the medical colleges of the state, by the profession at large, and was held in general favor by the people and their legislators. We hope by the provisions of this act that the high standard of medical education in Indiana will be maintained as far as dissecting material may effect that end.

The trial of Dr. Alexander for illegally procuring and holding anatomical material resulted in a disagreement, nine of the jurors voting for acquittal. It is scarcely likely that the case will come to trail again, or if it should, it is more than likely that the accused will be acquitted, as there was no particular feeling against him, except as he represented the colleges who have for years provided some five or six hundred medical students and teachers with anatomical material.

His standing as a physician and citizen will not be diminished by the ordeal through which he has passed, and with the new law no one need to jeopardize himself in the interests of medical education.—Indiana Medical Journal.

MEDICAL LEGISLATION IN ARKANSAS.

A bill regulating the practice of medicine has been enacted despite the opposition of the osteopaths. The bill was so amended as not to go into effect until ninety days after its enactment.

THE WEMPLE BILL.

A Mr. Wemple has introduced into the Assembly (New York) a bill relative to the "Chaste Treatment of Female Patients." The bill tacitly assumes that women are not now accorded such chaste treatment by physicians, and particularly by surgeons, the only redeeming feature about the imputation being that he assumes that the laxity of morals is very generally diffused throughout the medical profession and does not confine his implied accusations to any individual or collective body of representatives of the profession. The bill can never be given serious consideration by any body of legislators, but it is well that it should be generally known that such assinine views exist that they may be fully discussed and effectively refuted.

That such discussion may be full and intelligent we quote the bill as published in the Medical Record of February 7, 1903:

Section 1. That it shall be unlawful for any student, house-physician and surgeon, or anyone else, to expose the body or person of any female patient, in any hospital, medical college or elsewhere in the state of New York, for any purpose other than the performing of an operation necessary for the recovery or relief from pain of said female patient.

Section 2. That when it shall be deemed necessary for such operation to be performed, the parents and sisters and brothers, or such of them as shall be living, or in case none shall be living, the guardian or next friend designated by such patient shall be notified, at least twenty-four hours before the performing of such operation, and at least three such persons so notified shall be allowed to be present in the operating room during the entire performance of such operation, and until said patient shall be removed from said operating room and replaced in her bed until she recovers her sense; except, when in case of accident the notification herein required may be dispensed with, if an immediate operation be deemed necessary by the authorities in such hospital or medical college. In case such notification shall be dispensed with, no person or persons other than immediate relatives or guardian or next friend of such female patient so to be operated upon, shall be permitted to witness such operation or any part thereof.

Section 3. Any person or persons convicted of performing, or attempting to perform, or who aid by their presence or otherwise in the porefroming of an operation upon a female patient, except as permitted herein, shall be deemed guilty of a felony, and the punishment thereof shall be by fine of not less than one

hundred dollars, and not more than five hundred dollars, or by confinement in a county jail or state prison for a term not less than one year and not more than five years, or by both fine and imprisonment.

Section 4. This act shall take effect immediately.

We do not personally know what Mr. Wemple's relations to the medical profession have been, but they have evidently been about as extensive as those of the artist who arranged the group of wax figures at a recent exhibition to represent a "Surgical Operation." The patient was a very beautiful nude figure and the surgeons were carefully attired in frock coats, and some even wore their street gloves. Possibly Mr. Wemple may have been such an exhibition.

It is certainly right to have no unnecessary visitors present at any operation of any magnitude. The only excuse for the presence of other doctors and medical students is that their training has taught them what to sedulously avoid, and moreover is in the interest of science. But to deliberately import several persons totally ignorant of the requirements of modern asepsis into an operation is putting a premium on laxity in operating-room regime.

We are not aware that doctors are disposed to the unnecessary exposure of female patients and feel that we can confidently assert that no class of persons are more thoroughly alive to the requirements of decency than they.

The Medical Record, in commenting upon the bill, says: "There is not a medical man in the state who will not defy the Assembly committee to report this bill and who will not challenge its right to recommend its passage."—Exchange.

HEALTH DAY—AN ANTISEPTIC LAW IN UTAH.

A bill has been introduced into the Utah Legislature creating a new legal holiday, to be known as Health Day. By the provisions of the bill the first Monday in October has been set apart for the purpose of making it compulsory on "all persons occupying premises of whatever description, dwelling houses, offices, public halls, stores, theaters, etc., thorougly to cleanse and disinfect such buildings." As a penalty for non-compliance a fine of fifty dollars shall be assessed. City councils, town boards and county commissioners are charged with the enforcement of the act.

COUNTY PHYSICIAN REFUSING TO ACT IN EPIDEMIC—EXPENSE.

The Minnesota statutes provide that on the breaking out of epidemics of contagious and infectious diseases the constituted authorities who are present and have notices thereof have power to act, and that all necessary expense incurred by any board of health in the general control of contagious and infectious diseases within any town, village or city shall be a charge in favor of such town, village or city against the county in which the same is situated. The Supreme Court of Minnesota holds, in the case of the City of Mankato vs. Blue Earth County, that the health officer of a municipality is justified in incurring the expense of furnishing medical treatment for the purpose of controlling a contagious disease when the county physician, whose duty it is, refuses to treat the infected persons, and such expense may be recovered against the county. It says that it was sugested in this case that it was not in the power of the county physician to refuse; that he should have been compelled to perform his duty, or, if he would not, then application should have been made to the county commissioners to secure the requisite services. But the court does not think that the statute justifies such construction. It says that it is the evident intent and spirit of the whole law to provide a speedy method of controlling and stamping out such diseases; and, although it was made the duty of the county physician to perform such services, it would be unreasonable to require the public to undergo the delay and suspense attendant on securing another representative of the county in the manner suggested. It must be assumed that, for the purpose of caring for people afflicted in such a manner, the county physician is the duly-accredited representative of the county, and a refusal on his part to perform the services was ample justification for the health board to take the matter in its own hands, and furnish the medical attendance necessary to control and eliminate the infection. No distinction can be drawn between expenses incurred in removing the patients into quarantine, furnishing them shelter and necessary supplies for their comfort, and the expense of medical attendance for such services are required not only to allay the sufferings of patients, but also to control the epidemic. Furthermore, the county is liable, the court holds, for the necessary additional salary paid the local health inspector for extra services in combatting contagious diseases.—Exchange.

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APRIL 1903

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I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

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I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

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Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190_____

A. F. Duchman.

President.

_____

Secretary.

Legislation.

ORIGINAL ARTICLES

Interference by Trial Court in Malpractice Cases Upheld.

A case of more than unusual interest, and one that had many chapters in its history, has finally been disposed of by the Supreme court of Minnesota by its decision of August 8, 1902. The case was tried before a jury three times and was heard on appeal before the Supreme court three times. The course of these various trials occupied nearly five years of time, and entailed no end of worry and expense upon the defendant, Dr. Walter Courtney. Dr. Courtney is the chief surgeon and superintendent of the Northern Pacific Beneficial Association at Brainerd, Minn.

The plaintiff in the case was the widow and administratrix of the intestate Martin, who was an employe of the Northern Pacific Railway Company. Mr. Martin had been injured in a railroad accident at Brule, Wis., on May 25, 1895. His right foot was run over and the toes crushed by a car. A local surgeon at West Superior amputated the toes immediately and the next day the patient was taken to the hospital at Brainerd. He was under the defendant's care at the hospital until July 16th, when he returned to his home in Brainerd, but visited the hospital at frequent intervals for further treatment until September 16th, when he again returned to the hospital, where a further operation was performed by the amputation of an additional portion of less than an inch of the foot. The patient continued at the hospital without pronounced improvement until about October 19th, when a decided change for the worse took place. He rapidly declined and died October 23, 1895.

Dr. Courtney, as soon as the patient arrived at his hospital, made an examination of the foot and discovered that septicemia had already set in, so he opened the wound made by the local

surgeon at West Superior and provided a drainage. This sepsis was not severe and the patient soon recovered from it. There was enough tissue left to cover the stump with the use of granulations, but it would not heal, so the flaps were loosened and a second attempt made to get them to heal, but they would not. Collodion dressing was applied and the patient sent home to be out in the open air as much as possible. This did not cause the stump to heal and the patient again returned on the 16th of September, just mentioned. The operation then had was to cut off a little of the bone to get more flap. But this did not result in covering the stump, a small opening remaining, which was curretted on October 13th and closed with slight drainage by two sutures. The patient's temperature soon afterward began to rise, severe septicemia set in, and a short time later his death followed. The patient was not in good health during all this time of treatment, as all secretions were somewhat deranged, but nothing Dr. Courtney could do would seem to improve his condition.

Mrs. Martin first commenced her action for damages against the association for malpractice on the part of Dr. Courtney and his assistant, but the plaintiff failed because the intestate was a member of the association and, therefore, part of it, and a suit brought by the administratrix of a member of the association would be the same thing as suing the administratrix herself, which, of course, she could not do. She then brought suit against Dr. Courtney in the District court at Brainerd in 1898, alleging that he was guilty of malpractice in sending the patient away from the hospital to go out of doors without any dressing or covering on the foot except a gauze sock, and in consequence thereof infection entered through the unprotected granulating wound, establishing septicemia and resulted in death. Plaintiff in this trial called two witnesses, one a homeopath and the other a local physician. The former could only testify as an expert, of course, and could, moreover, judge of the skill and correctness of the treatment of the defendant by the teachings of his own school. For that reason he believed that Dr. Courtney's treatment was wrong and that the leg should have been amputated. The jury rendered a verdict for $1,250, and defendant appealed to the Supreme court. That court ordered a new trial because the testimony of the homeopath was admitted by the trial court, and because the evidence tended strongly to support the propriety of defendant's treatment.

A second trial was had before the same court, and this time the plaintiff modified her theory by contending that the wound

was covered with collodion at the time the intestate was first released from the hospital in July; that pus continued to flow from the time the patient entered the hospital until his death; that germs, instead of entering the wound through the gauze sock, were in the wound all the time, being kept in by the collodion, and that this confinement of the germs caused the septicemia to form and later the death which followed.

It is apparent that the plaintiff saw the utter hopelessness of trying to prove that there was no covering, so the next best thing was to admit the use of collodion and gauze, and contend that that use and the failure to discover the sepsis were negligence and lack of skill on the part of the defendant. The same state of affairs in regard to the evidence existed here as in the former trial, but notwithstanding this, the court gave the case to the jury and a verdict was rendered for $2,500 in favor of plaintiff. Defendant again appealed to the Supreme court and the case was again sent down for a new trial upon the ground that plaintiff's attorney was guilty of misconduct at the former trial.

A third trial was had under change of venue to a nearby county. The plaintiff introduced the same evidence in general as that put in at the second trial, the defendant put in all his testimony, and when the case was ready for argument, defendant made a motion that a verdict be directed for defendant, which the court granted on the ground that there was no case made out for plaintiff. Plaintiff made a motion for a new trial, which the court denied, and the final appeal was brought in the Supreme court, which is the wind-up of the case.

On this last appeal the only question before the court was whether the whole evidence required a submission of the issues of fact to the jury; if so, the direction of a verdict for defendant was error and the case would have to go back for a new trial. There was no doubt that the intestate died of septicemia and that its germs had existed in his system for considerable time before discovered by defendant. Whether the order of the trial court was correct or not, therefore, depended upon whether the septicemia was discoverable by the exercise of reasonable and ordinary care and skill. The defendant, his assistant and two nurses testified that no septicemia was discoverable. The only evidence which plaintiff brought out in that regard was that she and one other witness saw pus flowing from the wound at various times, but neither one was a physician and were not able to distinguish a poisonous from a healthy discharge. They could not, then, be allowed to diagnose disease nor define its symptoms as the basis of their judgment. That is the province of the medi-

cal expert. Plaintiff called one expert, who said that the closing of the wound was improper if pus was discharging from it; but said further that there is a healthy discharge from all wounds of a watery matter or serum that may easily be mistaken by the unprofessional observer for the poisonous discharge indicating sepsis, and that if the discharge which plaintiff called pus was such, certain other evidences of septicemia should also be present which did not exist in this case. This coincided with the views expressed by defendant and his experts.

The court said in reference to the effect of this testimony concerning the discharge that "it could be nothing more in fact than a conjecture whether the discharges from the wound were of a poisonous nature, or such as had been described by Dr. Courtney and his asistants; and mere conjecture or supposition should not be sufficient to overcome the presumption in favor of the attending physician. Where the submission of important facts necessary to sustain a verdict rests on conjecture or suspicion alone, it should not be said in any enlightened tribunal that it could reasonably sustain a verdict. Mere possibilities can never establish the probability of a fact requisite to be proved in order to make a party liable in any action whatever. To decide otherwise would be to say that verdicts may rest on mere possibility, speculation and conjecture." It therefore ratified the conclusion of the lower court when it held that it was its duty to set aside any verdict for plaintiff based upon this record as a matter of law and not in the exercise of its discretion.

This conclusion of the court is certainly correct. It is well established that the court should direct a verdict where the evidence has no reasonable tendency to support it. Such a corrective power must of necessity exist under any system of jurisprudence to protect litigants from palpable injustice being done them, otherwise courts would not be of any force whatever. It is not an arbitrary power, but a judicial trust confided to the court under conditions where the law can establish no fixed rule of duty, to be exercised in sound judgment of justice and right.

The necessity of the exercise of this power is nowhere more essential than in actions for the recovery of damages for alleged negligence and carelessness, and in particular, in those brought against the physician or surgeon. The art has made great advancement during the last few years, but it has not outgrown the limitations which have attended it and always will attend it. The physician or surgeon is dealing with the most sacred of rights and people generally expect too much from him for that

reason. Many people fail to distinguish the result from the service and immediately decide in their own minds that because the result was a failure the services must have been unskilfully performed, and suit is begun. But jurisprudence extends its protectorate to the physician and surgeon, and accords to him the presumption that he performed his services skilfully and carefully, and leaves its disproval to him who alleges otherwise. If the challenger fails to substantiate his allegation beyond conjecture, he must fail and the court should interfere, as it has done in this case and in the recent cases against Dr. Baldwin and Doctors Wood and Hunt, of Columbus, Ohio. Juries are very uncertain quantities and their feelings and prejudices are too apt to overcome their common sense, and the trial court's judgment should always be called into play to determine whether or no the case ought to go to them. If the case has merit, of course the court cannot interfere; but if it has not merit, then the court must step in and stop it before injury is done. A rigid and overwhelming defense will tend strongly to warrant the proper exercise of this power by the court, and it behooves every physician to leave no stone unturned to provide himself with all ammunition possible.

THE NEW VACCINATION LAW.

The new vaccination law just passed by the Minnesota State Legislature prescribes that all children before entering school must be successfully vaccinated, or show a certificate of a reputable physician that there are physical conditions forbidding the vaccination of such child.

It has been insinuated that there are a few physicians who would issue such certificate for a fee, or to obtain the good will of the family. In order to obviate this, the St. Paul Department of Health will require that any child to whom such certificate has been issued must personally present said certificate at the offices of the Department of Health to be countersigned, before a permit to enter the schools is granted. The certificate of the physician must be accompanied by an explanatory note stating the reason for such recommendation.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

RECIPROCITY BETWEEN EXAMINING BOARDS.

A bill passed by the Oregon Legislature empowers the State Board of Medical Examiners to grant licenses without examinations to physicians holding licenses from state boards which extend a similar recognition to Oregon licensees to practice.

For the present this practically means the state of Washington, which has a similar clause in its examination law. This mutual courtesy will save much inconvenience and possible trouble for physicians practicing near the Oregon-Washington line, and it is expected soon to extend the arrangement to all other contiguous states and ultimately the whole Northwest.

MEDICAL EXAMINATIONS IN NEW YORK STATE.

The secretary of the State Board of Medical Examiners representing the Medical Society of the State of New York, reports as follows regarding the January, 1903, state medical licensing examinations:

Total number of candidates, 103.

Successful, 75, or 72.8 per cent.

Unsuccessful, 28, or 27.1 per cent.

Of this number eight had previously passed in the medical primary branches. There was but one "honor" licentiate.

Fifty-one candidates appeared for certificate of proficiency in the medical primary branches (Anatomy, Physiology and Hygiene, Chemistry). Forty-seven, or 92.1 per cent., of these were successful.

TEXAS EXAMINATION.

The next meeting of the Board of Medical Examiners (regular) for the state of Texas will be held n Austin, April 20 to 23. For further information or application blanks, address Dr. M. M. Smith, Secretary, Austin, Texas.

INDIANA EXAMINATION.

A special meeting of the Indiana State Board of Medical Registration and Examination is called for April 23, when this year's graduates of the medical colleges of this state will be licensed to practice. They will receive certificates without examination if they matriculated before January 1, 1901, but after January 1, 1905, all graduates will be obliged to take examinations.

MISSOURI EXAMINATION DATES.

The regular spring examination of candidates for the practice of medicine in Missouri was held at the University Medical College, Kansas City, Mo., April 1 to 3, instead of April 3 to 5, which was the date previously set. At St .Louis examination will be made April 13 to 15.

There was an examination of physicians and osteopaths at the office of the Iowa State Board of Medical Examiners, February 3d and 4th. The candidates consisted of twenty-one physicians and twenty-six osteopaths. The following are the dates of approaching examinations:

Des Moines—April 23d and 24th.
Keokuk—April 28th and 29th.
Sioux City—May 4th and 5th.
Iowa City—June 18th and 19th.

The Des Moines examination will include the graduates of the Iowa College of Physicians and Surgeons and other applicants generally.

Physicians and osteopaths who are graduates of recognized schools of medicine or osteopathy will be admitted to any of these examinations. In all cases applications should be made out, the fees paid and diplomas verified before the day for beginning the examination. The secretary should be informed as to the number to be examined at each place so as to make ample arrangements.

CONFEDERATION MEETING.

The National Confederation of State Medical Examining and Licensing Boards will hold its next meeting at New Orleans, May 4, and urges every unaffiliated state or territorial board, whose duty it is to examine or license physicians intending to practice, to affiliate with the confederation. The secretary is Dr. A. Walter Suiter, Herkimer, N. Y. An invitation is extended to physicians and educators who are interested in the cause of higher medical education to attend.

A reciprocal license law has been introduced into the Minnesota Legislature. Its purpose is to admit to practice in this state physicians licensed in other states having the same requirements that this state has, and also recognizing in a like way licenses issued in this state.—Northwestern Lancet.

LICENSE REVOKED.

The State Board of Medical Examination and Registration has revoked the license of Daniel D. Weiser, Bourbon, who failed to appear and show cause why his license should not be revoked. Weiser had an old license, procured prior to the establishment of the present board, by displaying a diploma which he claimed was granted by a reputable college, when in fact it was bought from a diploma mill, and was not a result of study. He applied to the present board at the time of its establishment for a new license and was refused for these reasons. He then went to Michigan. He returned recently, took the old license to the county clerk and received a new one.

The "World-Renowned Dr. E. E. Rohrabaugh, of Chicago," who advertised to be at Des Moines, Boone and Marshalltown in the interests of the afflicted public, was arrested in Des Moines, convicted in the District court and fined $300. The plea of the unconstitutionality of the itinerant law was made, but the presiding judge happened to be an ex-Supreme judge, who had previously sustained the statute.

A warrant is out for the arrest of Dr. W. H. Hale, of Chicago, who claimed to represent the British Medical Institute at Des Moines. Dr. George H. Heath has been arrested at Boone and bound over to the grand jury for practicing magnetic healing. "And still there's more to follow!"—Iowa Health Bulletin.

STATE BOARDS OF REGISTRATION—THE MODIFIED MONTANA MEDICAL LAW.

Two bills bearing on the medical practice law of Montana has passed through the Legislature of that state; one making provision for appeals, providing that all appeals against the decisions of the board of medical examiners shall be tried before a jury of six physicians, not less than two of whom shall be of the same school of medicine as the appellant. This act takes out of the hands of the lay judges and juries the decision of questions as to professional conduct, standing, etc., of those who have come under the penalties provided for by the law.

The other amendment provides for reciprocity. It changes the section of the law that lays down the conditions under which licenses can be granted by inserting after the provision for granting of said license the following:

"Provided, however, that in all cases where an applicant for a certificate under this secton shall produce and exhibit to said board of examiners a certificate from a board of medical examiners, duly appointed and existing under the laws of any state of the United States and recognizing certificates or licenses from this state, certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state issuing said certificate, and that said board issuing said certificate has subjected the applicant to a thorough examination to ascertain this fact, or certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state issuing said certificate; and to the further fact, if such is the case, that said applicant was exempt from examination under the provisions of the law of said state, by reason of his residence in said state in the active practice of medicine and surgery at the time of the passage in said state of said law requiring the examination of applicants to practice medicine and surgery; he or she may, at the discretion of said board of examiners, on paying the fee required of applicants for examination under the provisions of Section 607 of this article, and otherwise complying with all the requirements of this article, receive from said board of examiners a certificate to practice medicine and surgery within this state, and on filing said certificate with the county clerk of the county in which he resides, as is provided in Section 604 of this article, he shall be a legally qualified practitioner of medicine and surgery in this state."—Exchange.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I APRIL 1903 No. 7

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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EDITORIAL NOTES

Opposition to State Boards.

The opposition to State Boards of Registration in medicine and surgery have to make their annual appearance in many of our states to remind us that they are not forgotten and that all such boards are "mere trusts." Massachusetts is the latest to experience this pleasure. On April 1st last Dr. Immanuel Pfeiffer, fortified with voluminous documents, books and statistics, led "this year's" charge on the Massachusetts board by appearing before the committee on public health of the Legislature with his bill to abolish the board. Dr. Pfeiffer gave the committee the whole history of the legislation regarding the practice of medicine leading up to the bill of 1894, which he called the "medical trust law." He said the Board of Registration was organized as a small trust within a trust, and attacked it in the entirety and as to its individual members. He assumed by statistics that the board had made false returns to the governor in the matter of expenditures; that the secretary of the

board had been paid the terrible sum of $46 for a single day; that one of the members of the board was ineligible to membership because his degree was not secured as the law says the degrees of members shall be secured. He also attacked the secretary for arresting and prosecuting men for doing good in healing mankind, and arraigned him as a former trustee of the reform school, which was found over twenty-five years ago to be in bad condition.

Another witness before the committee went to the Bible for arguments for freedom in practicing medicine and said that he represented the "liberty-loving citizens of the commonwealth."

Such attacks as this are ridiculous. The Boards of Medical Registration throughout the country have come to stay. They are the outgrowth of necessity. No person who is not qualified to practice such an important profession as medicine ought to be allowed to impose himself upon the innocent public. Some standard of proficiency must be set and this cannot be better done than to establish by law certain requirements and appoint some body of men to see that these requirements are fulfilled to the letter. Improvements, of course, are always in order and are essential, but the proper foundation has been laid. A physician who is qualified by learning and intelligence to practice his profession is not opposed to having those qualifications put to a test; otherwise, where would be the benefit to society?

This attack in Massachusetts will doubtless receive the same fate awarded to its predecessors, and convince the committee more fully that the board is even more essential than before.

Physicians Resign Upon the Appointment of a "Nature Healer" on Staff.

The twenty-eight physicians under contract with a certain large sick benefit society at Gera, Germany, all resigned when a "nature healer" was appointed a member of the medical staff on the same terms as the rest. The Leipsic Medical Union has resolved to sustain them in their action and has issued an appeal stating how the Gera colleagues are battling for the honor of the profession, and warning all medical men to refrain from serving the said benefit society under any conditions whatever, until the matter is satisfactorily arranged.—Journal.

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

A DOCTOR MUST TESTIFY AS TO HIS PROFESSIONAL INCOME.

In a suit brought by Dr. M. Pinckney Morrell, of St. Louis, against Dr. Joseph J. Lawrence, of New York City, proprietor of Medical Brief, to recover $16,030 for profesional services rendered to the son of Dr. Lawrence, Dr. Morrell was asked by the attorneys for the defendants to state what his income from his profession was. The doctor declined to answer and Judge Franklin Ferris had decided that the question must be answered on the ground that this knowledge is necessary in order to enable the court to arrive at some estimate of the value of the services rendered.—New York Medical Journal.

JURY DOES NOT AGREE—VINDICATION FOR SURGEON IN MALPRACTICE SUIT—QUEER DISCOVERY DURING PROGRESS OF TRIAL—STOOD 9 TO 3 FOR THE DEFENDANT.

The jury which has been hearing the case of Charles Stringer against Dr. K. K. Wheelock at Auburn this week, has disagreed and was discharged recently. Mr. Stringer brought suit for $10,000 against Dr. Wheelock, charging that he was disfigured by an operation. The attorneys for Dr. Wheelock feel that he has secured a complete vindication by the disagreement of the jury, as his attorneys report that the twelve stood nine for the defendant and three for the plaintiff. A queer fact was discovered during the trial of the case, namely, that one of the physicians who testified for the defendant had recently secured a judgment against one of the jurors for an unpaid doctor bill. It is believed that the disagreement of the jury will end the proceedings.—Fort Wayne News.

PHYSICIANS MAY TESTIFY AS TO COMPETENCY OF NURSES.

The First Appellate division of the Supreme court of New York holds, in Ward vs. St. Vincent's Hospital of the City of New York, that a physician who has had daily opportunity of observing the work done by a nurse—who has seen how she has done it—is qualified to say whether, in his opinion, she was a skillful and competent nurse. It says that the necessity for opinion evidence arises whenever it is impossible to state to the jury all of the facts which are essential to enable it to form an accurate judgment. Whether or not one be a skillful and competent nurse necessarily depends on many facts; all of which, from the very nature of things, it is impossible to lay before a jury, and for that reason a physician who has the personal charge of a patient, and who daily sees the manner in which a nurse performs her work over that patient, is competent to express an opinion. Furthermore, while it holds that it was for the jury to say whether, on the facts presented, one of the Sisters of Charity in charge of a charitable institution acted within the scope of her authority in making an alleged contract to furnish the services of a skilled and experienced nurse to the party suing while she was undergoing a surgical operation and recovering therefrom in such institution, the court holds that it was error to refuse an instruction that if the jury found, as a fact, that the party received no more than the personal assurance of the sister, then there was no contract on behalf of the institution.—National Hospital Record.

A TEST CASE ON PRACTICE—DR. BASS, WHO WAS ARRESTED BY STATE MEDICAL BOARD, STRIKES BACK.

Demurrer to the complaint of Dr. John T. Bass against the Colorado state board of medical examiners for $20,400 damages, has been overruled and the case will have to come up on its merits as originally pleaded.

The action was directed against the board because it caused at two separate times the arrest and prosecution of Dr. Bass for alleged malpractice. Bass has obtained acquittal in both cases and upon the contention that hs arrest and trial were a species of persecution, he has sued for damages. The defendant board will stand upon the justification of their action in that Bass practiced without diploma and in the teeth of official warning as to the consequences.

LIABILITY OF HOSPITAL FOR ASSAULT ON PATIENT.

The case of Galesburg Sanitarium against Jacobson, as it is entitled in the Appellate court of Illinois, Second district, was brought by the latter party to recover damages from the former, a corporation conducting a hospital, in which he was a patient some two months, and he alleged he was assaulted, beaten, mistreated, and injured by the servants and employes of the institution. He was ill, the court says, and was a patient residing at the hospital for treatment, and was paying for the services he received, and he was entitled to reasonably kind treatment, so far as the nature of the malady will allow. No assault on him was justifiable, except so far as it was necessary to control him at times when he was insane or delirious. On the occasion in question, the servants unnecessarily abused him, and inflicted on him injuries for which the jury were warranted in holding the master responsible. There was no claim that this was a charitable institution, nor any question as to its liability for the negligence of its employes on that account. The fact that the jury awarded but $100 as damages indicated they were not governed by passion or prejudice.

VERDICT FOR DEFENDANTS.

In the suit for $5,000 damages brought against Drs. Thomas J. and John R. Maxwell, Keokuk, Iowa, by Mrs. Theresa Winkler, who alleged that the defendants removed a portion of her husband's brain during an autopsy and did not return it, the plaintiff was non-suited.—Exchange.

MALPRACTICE CASE DISMISSED—SADIE COLEMAN GIVES UP CLAIM FOR $25,000 OF DR. SUMMERS.

Recently the malpractice case of Sadie Coleman against Dr. J. E. Summers, jr., was dismissed by Judge McPherson and the costs were taxed against the plaintiff. The case is one which was brought up from the District court of Council Bluffs, in which Sadie Coleman asked for $25,000 from Dr. J. E. Summers, of Omaha, for injuries which she claimed she received through a surgical operation performed during the month of April, 1899.

MARCONI SYSTEM IN MEDICINE.

One calling himself "Professor John Newsome, phrenologist and chycopoedist," has been arrested in Fall River, Mass., on the charge of having violated the medical statutes in practicing medicine without a license. Various witnesses were examined by the court and likewise by the "professor." The man is from Blackburn, England, and he says that he possesses the "gift of herbs," and also a rare faculty of "doping out what's the matter with a man," without resort to the ordinary methods of diagnosis. He says: "I get the disease from the body by putting my thumb on the patient's forehead, and by a kind of mesmeric telepathy, which I cannot explain, I feel all the pain that is experienced by the patient and in the same location of the body. Then I give herbs." He confessed that to one of the patients who testified in his behalf he gave thirty-three different kinds of medicine, and to another forty-three, and to still another twenty-seven, all mixed up in a bag. He says: "The herb business comes natural to me, and I can explain it no more than I can explain my system of diagnosis." He further said that by using a magic tube placed behind the ear of the patient he can determine whether he has kidney trouble, catarrh of the stomach, and this he explained by saying that he understood the head, and can therefore tell if a man clings to life, and that he can tell if the blood is rising without looking at the tongue or feeling the pulse. "In a sense, it's wireless telegraphy." Various patients of the "professor" testified strongly in his behalf and that after consulting numerous "regulars" they found relief only in the medication administered by the "professor." The court held that although the "professor" was "harmless," he was at the same time guilty according to the statutes; therefore he was adjudged guilty.—Exchange.

The quack doctor who has been operating in the vicinity of Carlyle, Ill., has been caught and is now in jail at that place. He would buy a dime's worth of yellow root at a drug store and with a liberal use of rain water make a bucket full of medicine and sell it to the unsuspecting people who imagine they are sick. He sold a German farmer named Schmidt for $18 two fruit jars full of the stuff, guaranteeing that it would cure rheumatism. The family doctor happened along a day or two afterwards and exposed the scheme. Schmidt got track of his man and had him arrested, and now he is waiting for the May grand jury.

A STATE EXAMINATION IS NOT NECESSARY.

Judge James R. Macfarlane handed down an opinion refusing a new trial in the case of Matilda Watson against the estate of William E. Osborne, deceased, in which the plaintiff was awarded $1,940. The husband of the plaintiff was a doctor, and he attended Osborne before his death. The physician has since died and his widow sued for his services. The defense was that part of the services were rendered in South Carolina, where Dr. Watson was called to attend Osborne, and that the physician had no right to practice in that state, not having passed a state examination. In part, the court says:

"The defense set up is abhorrent to every sense of justice, and it would, if valid, prevent any physician from going to the assistance of a patient who became ill beyond the confines of the state of the physician's residence, if after abandoning his own practice and giving his professional skill and exhausting his energies, he be told that he should have passed an examination first and saved the patient afterward."

DAMAGES FOR BETRAYAL OF CONFIDENCE.

Doctor Playfair, the renowned obstetrician of London, was in 1896 unsuccessful in defending an action instituted by a patient to obtain $60,000 damages for violation of professional confidence. The plaintiff was a married woman whose husband had been in Australia for about one year. During this absence the family physician attended the woman through an illness, and being somewhat puzzled concerning the nature of her ailment, he called Doctor Playfair in consultation. The latter was matrimonially connected with the patient, she being his wife's sister-in-law, and consequently after taking an inventory of the condition, he unhesitatingly accused her of infidelity and promptly reported the diagnosis to his wife, admonishing her to sever social relations with the patient. The charge now became contagious and soon spread like wildfire, resulting in the woman being ostracised from society, and disallowed an annuity of $2,500 which she had been receiving from her father-in-law. At this juncture she requested her husband to return and vindicate her character. He firmly believed his wife innocent of unchastity and immediately advised legal proceedings to restore honor and procure damages. The defense met the issue with the claim that protection of wife and family demanded the course pursued, but the judge observed that infraction of the sacred relation under any circumstances incurred responsibility before the law, and the jury therefore rendered a verdict in favor of the plaintiff.

CAMBRIDGE PHYSICIAN AND MID-WIFE IN COURT FOR FAILURE TO MAKE RETURNS.

Dr. Charles S. Cahill and Katherine Connor, a mid-wife, both of Cambridge, Mass., were in the Somerville police court recently charged with failing to report births to the city clerk. Dr. Cahill entered a plea of nolo contendere through his attorney, John H. Hurley, while the same plea was entered by the court for the Connor woman.

These are the first cases of such a nature that have ever been tried in the Somerville court. The law requires that physicians and mid-wives shall report births to the city clerk monthly. City Clerk Vincent has tried all peaceful ways of making the tardy ones live up to the law. In the case of Dr. Cahill, Mr. Vincent said that he had made no returns for the year 1902, but when his canvassers were going the rounds of the houses he found that Dr. Cahill had attended nine births during the months of November and December, of which there was no return at City hall.

The Connor woman attended two cases in December, of which she made no return, but when she discovered that she was to be brought to court, she filed several returns with Mr. Vincent. Both cases were continued.

FRED LAMPHERE WILL BRING SUIT TO COLLECT $10,000 DAMAGES IN A REMARKABLE MEDICAL CASE.

On application of Attorney Frank Harding, Surrogate Marcus recently appointed Fred Lamphere, of 423 Northampton street, administrator of the estate of "Baby" Lamphere. The baby died when less than one day old.

Mr. Lamphere intends to sue the doctor who attended his wife when the baby was born for $10,000 damages, alleging malpractice. He claims the child would have lived had the physician properly cared for her.

According to Lamphere's allegations, a baby girl was born to him on October 31, 1902. The doctor who attended his wife when the child was born, about 6:30 p. m., said the child was dead and directed Lamphere to get an undertaker. About 10 o'clock that night the undertaker informed Lamphere that the child showed signs of life. The doctor was recalled and attended it, but it died about 3 o'clock the next day. Exposure and neglect, Lamphere alleges, caused death.—News, Buffalo, N. Y.

KEELEY INSTITUTE AT MEMPHIS FILES SUIT FOR $160,000 IN UNITED STATES COURT.

In the United States court, Peoria, Ill., March 18, was filed a suit wherein the plaintiff asks for damages to the amount of $160,000, and in the declaration there is made some sensational allegations concerning the use and sale of the remedies used by Dr. Leslie E. Keeley in the cure of drunkards and opium fiends.

The suit was filed by the Memphis Keeley Institute against the Leslie E. Keeley company. In the papers in the case it is set forth that the Memphis Keeley Institute is the successor to the Keeley Institute of Tennessee. The plaintiff charges a violation of a contract entered into by the Leslie E. Keeley company and Charles B. James, the president of the Memphis Keeley Institute, on February 15, 1892. The contract mentioned granted to Adams the sole and exclusive agency for the sale and administration of Keeley's chloride of gold remedies in the state of Tennessee for a consideration of $50,000.

The Keeley company was to furnish the remedies at 60 per cent. of the regular retail price, which at this time are:

Chloride of gold for opium, $10 per pair.

Chloride of gold for drunkenness, $9 per pair.

Chloride of gold for neurasthenia, $8 per pair.

Chloride of gold for tobacco habit, $5.

In the contract Mr. Adams agrees that no case, except charity cases, shall be accepted for less than $25 per week, exclusive of private attendance.

On February 17, 1892, James sold the contract to the Keeley Institute of Tennessee for $50,000, and on February 8, 1894, it was sold to the Memphis Keeley Institute.

One of the sensational charges made is that the defendant sold double chloride of gold remedies, which are altogether different in their constituent and component parts from the chloride of gold remedies. The drugs are deleterious, so it is alleged in the bill, and dangerous to the health of the patient, bringing about "great physical weakness," "dilation of the eyes," "dryness of the throat," "full feeling in the head," often "confusion of ideas," "impairment of memory," "weakness of mental capacity," and in a great many cases, so it is alleged, a general giving away of the faculties.

In the bill it is stated that the foregoing facts were not discovered until on or about March 9, 1903. The plaintiff also alleges that from February 15, 1902, until October 16, 1902, they paid to the defendant the sum of $55,000 for remedies, all of which they claim were not sent as ordered and were not as rep-

resented by the defendant. They claim that the real remedies have not been furnished. By the failure of the defendant to furnish such remedies the plaintiff claims he has been damaged to the amount of $50,000.

In their contract it was stated that the Leslie E. Keeley company was not to solicit patronage in the state of Tennessee and the plaintiff now alleges that the defendant did solicit and did treat patients from Tennessee. For that violation of the contract the plaintiff asks damages to the amount of $50,000.

In the contract it was specified that the Memphis Keeley Institute was to receive a commission on all sales of home treatments by the Leslie E. Keeley company in the state of Tennessee. They claim they have not received these commissions and ask damages to the amount of $5,000. In all the plaintiff alleges he has been injured to the extent of $160,000 and prays for that amount.

The declaration is signed by Charles B. James, president of the Memphis Keeley Institute.—Herald-Transcript.

SUES FOUR DOCTORS FOR $5,000.

Edwin W Gray has brought suit in the Circuit court for $5,000 damages against Drs. N. S. Davis, jr., R. B. Preble, E. C. Dudley and S. C. Plummer, of the executive committee of the faculty of the Northwestern University Medical School, Chicago. He declares he was expelled from the institution without a hearing, contrary to university rules.

The meeting at which Gray's case was consdered was held three weeks ago, the four defendants and Dr. Arthur Edwards being present. Dr. Edwards advocated granting the student a hearing, but expulsion was the verdict of the other four. Gray declares his reputation and his future have been injured. He bases his suit upon a rule of the university which provides that a student may be suspended, dismissed or expelled by vote of the faculty only after he has been given a full and impartial hearing.

"Gray had made a written confession to a certain charge brought against him," said Dr. Preble recently, "and the committee deemed it best to expel him. We were agreed that his confession obviated the necessity of a hearing. At any rate, the rule in regard to a hearing applies only to the literary department of the university. There is no such rule in the medical school. Though I do not care to say what charge was brought against Gray, the committee deemed it serious enough to warrant his immediate expulsion."—Record-Herald.

SUED TO RECOVER FOR SERVICES AS HEALTH OFFICER.

The judgment of the Carter Circuit court was affirmed by the Appellate court in the case of E. L. Hudgins against Carter county. Hudgins, a physician, filed the petition to secure $4,550 for services as health officer in a smallpox epidemic.

The court below sustained a demurrer to his petition. The court here says the physician can recover for services and medicines furnished to indigent persons and for services and general supervision rendered by him to prevent the spread of disease and for attention to those quarantined.—Times.

MARSHALLTOWN WOMAN SUES DOCTOR FOR $6,500 FOR NEEDLESS OPERATION.

Dr. E. S. Burroughs has been sued by Mrs. Emeralda Pellegrini for $6,500 damages for alleged malpractice. The plaintiff claims she was informed that she was afflicted with a dangerous fibroid tumor and that a surgical operation would be necessary to save her life. Acting on the advice of the defendant, she was taken to the hospital and submitted to the operation, but when the incision was made it was discovered that there existed no tumor whatever. Mrs. Pellegrini was delivered of a healthy, well-formed child three months after the operation. Dr. Burroughs states that the suit was brought through the efforts of other surgeons of the city on account of professional jealousy.—Tribune, Sioux City, Iowa.

SELLS M. D. DIPLOMAS.

The postmaster general issued an order January last, denying the use of the mails to the "Central University of Medicine and Science," and J. W. Norton Smith, president, 68 Montgomery street, Jersey City. The university represented that it was an incorporated institution in good standing and that it had an extensive medical faculty. To those desiring to practice medicine the University of Medicine and Science sold diplomas at prices ranging from $5 to $20, according to the ability of the prospective M. D. to pay. The scheme is identical with that operated in Chicago by James Armstrong, under the title of the Metropolitan Medical College. Armstrong was tried before Judge Kohlsaat in the United States Circuit court and sentenced to one year in jail. The Department of Justice will probably take action against J. W. Norton Smith, who is named in the fraud order as the promoter of the present scheme.—Exchange.

Comments and Queries.

Queries addressed to this department of the MEDICO-LEGAL BULLETIN will be recorded and answered through these columns if of general interest, but if of a personal nature they will be answered by direct correspondence.

HOW TO OBTAIN A LICENSE TO PRACTICE MEDICINE IN INDIANA.

All applicants must be bona fide residents of the county and state.

Every applicant must procure the necessary blank from his county clerk or from the secretary of the board, fill it out carefully and make affidavit to the same before some officer authorized to administer oaths, also have two freeholders, residents of the same county in which applicant resides, make affidavit as to the moral character and to the personal identity of the applicant as the person mentioned in the diploma. The application blank, when properly filled, together with diploma and proper fee, must be sent by express or registered mail to the State Board of Medical Registration and Examination, Room 120, State House, Indianapolis, Ind.

The only applicants exempt from examination are the graduates of reputable medical colleges located in Indiana. After January 1, 1905, an examination will be required of all candidates. The subjects for examination are anatomy, physiology, obstetrics, gynecology, materia medica and therapeutics, theory and practice of medicine, chemistry, surgery, pathology, bacteriology, hygiene, histology, rhinology, medical jurisprudence, opthalmology, othology, laryngology and dermatology.

The examination begins the second Tuesday in January and July of each year, at 8 a. m., and continues three days. Only graduates of reputable medical colleges are admitted to the examination.

Applications for examination, accompanied by diploma and fee, $25, should be on file in this office at least five days prior to the date for examination.

Temporary permits to practice medicine, surgery and obstetrics until one month after the next regular meeting of the

board are issued on request, when the application is complete and satisfactory, diploma recognized and fee paid in full.

Upon receipt of the certificate by the applicant, he shall, upon the presentation of the same to the clerk of the county in which he resides, receive a license to practice medicine, surgery and obstetrics within the state of Indiana. The recipient of such license shall pay to the county clerk fifty cents as his fee for issuing and recording the same.

In case of change of residence from one county to another within this state, the holder of a physician's license shall obtain a new license in the county where he proposes to reside by filing with the county clerk the license obtained by him in the county in which he last resided and the clerk shall issue to him a new license or temporary permit to do so under the acts of 1897, 1899 or 1901.

Those who desire to apply for license to practice obstetrics must follow the same directions as above, but the fee is only $5 for registration on diploma from a recognized school, or $10 for examination.

The regular sessions of the board are held the second Tuesday in January and July of each year.

Fee for registration on diploma, $10.

Fee for examination, $25.

All fees must be sent by registered mail, express, postal note or draft. Individual checks are not accepted by the board.

THE MEDICO-LEGAL BULLETIN, VOL. 1, NO. 4.

This magazine is published by the Physicians Defense Company, of Fort Wayne, "Prophylactic in Alleged Malpractice." Dr. Buchman is president; Drs. Porter and McOscar, of Fort Wayne, are among the directors; also Dr. Geo. J. Cook, of Indianapolis. The company is well established, has a capital of $100,000, a reserve of $50,000 and has already contested and prevented both in and out of court numerous unjust damage suits against physicians. It has had the editorial support of all the leading journals in the United States.—Indiana Medical Journal.

The Medico-Legal Bulletin is the title of a new monthly publication owing its inception to the need of medical practitioners for authoritative and easily accessible information relative to the laws governing the practice of medicine, and the physician's rights, duties and liabilities under those laws, which is being issued by the Physicians Defense Company, at Fort Wayne, Ind.—Medical Book News.

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MAY 1903

MEDICO-LEGAL BULLETIN.

Vol. I No. 8

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For a Defense Contract for *Medical and Surgical and Dental Services, and I understand and agree that said Contract shall be based upon the following statement of facts and agreements; and that the Company shall not be bound by statements made by any agent or broker not written or printed herein.

My full name is.....Office No.....St.

City of... .....County of.....State of.....

If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice

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I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

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THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract and to pay all the cost and expense of defending such suits not exceeding **FIVE THOUSAND DOLLARS** *in defense of any one suit, not exceeding in the aggregate* **TEN THOUSAND DOLLARS** *in defense of suits based on services rendered within one year from the date of this contract or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated, to wit:—*

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__.

A. P. Buchman.
President.

_____
Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

Hospital Liability.

While we are striving to settle the liability under which the physican and surgeon is bound by the law, we must not neglect to consider and determine, if we can, what the law has to say about the hospital, in which the services of the surgeon are most frequently rendered. No person or institution is exempt from all liability of every kind. There is always some duty which the public can demand of every person, natural or artificial. The practitioner of medicine and surgery owes his patients the duty to possess and exercise skill and care and diligence in treating their diseases and injuries, and the question is, what is the duty which the hospital, in which the services are performed, owes those patients?

The hospital is either public or private in extent, or charitable or non-charitable in nature. The public hospital is one open to all. It offers its facilities to any one who cares to avail himself of them, whether or no it charges for such use. To make it a public charitable institution it must be organized without capital stock, with no provision for making dividends or profits, or it must derive its funds mainly from public and private charity and hold them in trust for the object of sustaining the hospital. As soon as it produces an income for its organizers it loses its charitable feature and becomes an institution for profit.

There are very few private charitable hospitals, because most private hospitals are created by physicians and surgeons for their own professional uses, in which the non-profit intention does not enter. So we will confine ourselves to the public hospital.

All this is important, because the law always looks with favor upon all charitable acts and institutions and gives to them liberalities which it does not award to other institutions. For in-

stance, in most communities there is no tax for state, county or city purposes placed on such institutions; and this is for good reason. If they were taxed as the so-called profit institutions of the state, it would be diverting the funds of the institutions from the charitable purposes for which they were intended, and therefore deplete just that much their usefulness in the community. Those purposes are to administer to the comfort of the sick without expectation of gain on the part of those interested in the institution, and it would be unfair to single them out from the many institutions of charity and compel them to be answerable for duties that would not be placed upon the others, for the funds and resources of all are derived from similar sources, and their objects and purposes are similar.

With this general statement as to the nature and rights of the hospital we must consider whether or no the law, in dealing with charitable institutions, so far favors them as to make any modification or variance in the liability which it imposes for the violation of the rights of the people. As a general rule, every corporation is liable for the negligence or carelessness of its employes, since individuals are liable for their own negligence, and that of their servants, and a corporation—particularly a private corporation—is but an association of individuals united for some common purpose. and permitted by the law to use a common name and change its members without a dissolution of the association. This is particularly true of the railroad corporation; but it is equally so with all corporations for profit. It is due to the fact that the corporation, being one for the personal gain of its stockholders, can be said to have a fund from which any damages recovered against it for the negligence of its employes may be paid. This fund is the dividend fund, or, rather, that from whch the dividends are paid to its stockholders. It is not a trust fund. The public charitable hospital is not a corporation for profit and it, therefore, has no dividend fund and consequently no fund from which damages could be paid for negligence. Its funds are all trusts. But there must be some responsibility under which the hospital has to stand. The most reasonable duty, and the one which the courts have singled out as that which does not defeat the purpose of the institution, is that the hospital must employ only reasonably skillful and careful and diligent physicians and surgeons, and attendants and servants. If it fails in that, it is liable in damages. This, it is easily seen, is a remote possibility. The hospital for its own reputation's sake would be careful to select for its physicians and surgeons and employes only those whom it knew to be competent. Furthermore, the ob-

ligation to prove that the alleged negligent person was not competent and that the hospital knew that fact, is a difficult matter and one which most men would refrain from assuming. The fact that the person in question was negligent in the particular case does not settle the question of his reputation as a physician and surgeon or attendant. The attacking person must go further and show that the hospital knew him to have such a reputation, or was indifferent to what it was. The difficulty of this proof is apparent.

The courts are quite clear on the liability of the hospital for the negligence of its physicians and others in its service, though not a great many have been called upon to express themselves. The early cases are those of McDonald vs. the Massachusetts General Hospital, decided by the Supreme court of Massachusetts in 1876, and reported in 120 Mass., 432; and Galvin vs. Rhode Island Hospital, 12 R. I., 411, decided in 1879. These cases are opposed to one another and the two courts take different views of the matter. In the Massachusetts case the action was brought against the hospital for the negligent and unskillful treatment of plaintiff's fractured thigh by the hospital's servants The plaintiff was a free patient in every respect. The servant in this case was the house pupil, or interne, who was a senior at the time in Harvard Medical College. This pupil set the bone under the direction of the visiting surgeon, who had direct charge of the treatment of the bone. This surgeon was a man of high professional character and reputation and the pupil was recommended to his post by the attending physicians and surgeons.

The hospital was incorporated under the laws of Massachusetts and its funds had been derived from grants, devises, donations, bequests and subscriptions of money and other property contributed by the commonwealth and benevolent persons to be used and improved for the erection, support and maintenance of a general hospital for sick and insane persons, according to the character and acts in amendment thereof and from profits of the Massachusetts Hospital Life Insurance Company, paid over to the defendant and also in part from the board of paying patients. The price of board is placed as low as the funds of the hospital will permit, and patients who are there received are expected to pay as nearly as possible, according to their own circumstances and to the accommodation they receive. Besides this, the hospital had a number of free beds, furnished from the general funds of the institution and from donations for that purpose. One of these beds plaintiff occupied while in the hospital.

The court, in deciding this corporation to be a public charity, said:

> "The corporation has no capital stock, no provision for making dividends or profits, and whatever it may receive from any source it holds in trust to be devoted to the object of sustaining the hospital and increasing its benefit to the public, by extending or improving its accommodations and diminishing its expenses. Its funds are derived mainly from public and private charity; its affairs are conducted for a great public purpose, that of administering to the comfort of the sick, without any expectation, on the part of those immediately interested in the corporation, of receiving any compensation which will inure to their own benefit, and without any right to receive such compensation."

The court added that it did not affect its character as a public charity by supplementing its funds by such amounts as it may receive from those able to pay wholly or entirely for the accommodation they receive, since those sums so received are held upon the same trust as gifts of pure benevolence.

The court further held that there was no liability upon the hospital because "It has no funds which can be charged with any judgment which he might recover, except those which are held subject to the trust of maintaining the hospital."

Another view which the court took was that the contract between the patient and the hospital, if any at all could be implied, was that the corporaton owed him the duty to select competent and careful agents. So that the liability of the hospital can extend no further than this; if there has been no neglect on the part of those who administer the trust and control its management, and if due care has been used by them in the selection of their inferior agents, even if injury has occurred by the negligence of such agents, it cannot be made responsible. The funds intrusted to it are not to be diminished by such casualties, if those immediately controlling them have done their whole duty in reference to those who have sought to obtain the benefit of them.

The Massachusetts rule is thus easily deducible. It is that a public charitable institution is liable to its patients for the negligence and unskillfulness of its agents no further than to be held responsible if it is negligent in selecting competent agents.

The Rhode Island case seems to hold adversely to the Massachusetts court. In this case the patient had accidentally sawed off two fingers of his right hand and went to the hospital to be treated. The surgical interne took him in charge, and after try-

ing to arrest the hemorrhage by ligating the arteries, he applied a tourniquet to the patient's arm so tightly as to stop the circulation and kept it there for nearly seventeen hours before the arrival of a surgeon who was skillful enough to ligate the arteries, with the result of mortification and amputation of the arm. The interne did not send for a surgeon for nine hours after the patient came to the hospital, and none arrived until after about seventeen hours, though there were four nearby subject to call. The patient paid for his board and attendance.

The hospital was organized under the laws of Rhode Island and its funds are derived in a similar manner to those of the Massachusetts hosptal. The same arguments as to exemption from liability were made in this case as in the former one, but the court refused to adopt the view of the violation of the trust fund which the Massachusetts court took, but held the hospital liable for the negligence of the interne. It said, "When a corporation is created for certain purposes which cannot be executed without the exercise of care and skill, it becomes the duty of the corporation to exercise care and skill; and the fact that it acts gratuitously, and has no property of its own in which it is beneficially interested, will not exempt it from liability for any neglect of the duty, if it has funds, or the capacity of acquiring funds, for the purpose of its creation, which can be applied to the satisfaction of any judgment for damages recovered against it." The court went further and said that the corporate funds could be "applied, notwithstanding the trusts for which they are held, because the liability is incurred in carrying out the trusts and is incident to them."

In other words, the Rhode Island court does not adhere to the theory that all the funds of the hospital are trusts which cannot be violated by paying a judgment for damages. It holds that the hospital is not only liable for neglect in selecting competent agents, but also for the neglect of those agents. It said that any immunity from liability on the part of such a hospital as this must come from the legislature and not from the courts. This the legislature of Rhode Island has since given, though this decision is still the law in Rhode Island, except so far as modified by statute.

The two cases are thus opposed to one another in their arguments and theories as to the nature of the funds of a public charitable hospital. We will not attempt to harmonize the two decisions, for they oppose each other too strongly, but it is safe to say that the Rhode Island case stands practically alone, while the Massachusetts case is followed in nearly every other case. The

latest case is that of Pepke vs. Grace Hospital, decided a year ago by the Supreme court of Michigan. Grace Hospital is a charitable institution, organized and maintained in Detroit. The trustees are laymen, and a medical board of twenty-five physicians and surgeons of Detroit have charge of all surgical matters in the hospital, including the appointment of members of the medical staff. The court upheld the hospital as being free from liability, when it had been careful to select a competent board to appoint the medical staff, and this upon the ground that the funds of the hospital were a trust which must not be used to compensate injured parties for the negligence of the physicians and surgeons, etc., employed to treat patients. This case follows a previous Michigan case against Harper Hospital, which latter case approves the Massachusetts decision.

There is no longer any doubt of the wisdom of this ruling by the courts. If the trust fund must be used to compensate injured parties for the negligence of the employes of the hospital, the fund might be entirely destroyed and diverted from the purpose for which the donor gave it. Charitable trusts cannot be thus thwarted by negligence for which the donor is in no manner responsible. The fund is jealously guarded by the law and it "does not permit it to be frittered away by the negligent acts of those employed in its execution." Since the trustees cannot by their own act divert the fund from the intended purposes, it is right that it cannot be indirectly diverted by the negligent acts of the trustees or their employes. The patients upon accepting the benefits of the hospital, accept them upon that condition. This, of course, does not mean that the trust fund is exempt from all liability for the torts of those concerned in its administration. Torts may be committed which are entirely outside the use of the benefits of the institution for which the fund would be liable, such as maintaining a nuisance or a dangerous stairway in the building. Liability for these torts stands on the same ground as the violation of duty to select competent physicians and surgeons. The liability of the hospital is confined strictly to that duty to select competent servants to administer to its patients, whether those patients are charitable or paying. The reason for the rule is well summed up by a Massachusetts judge, when he said: "It would be intolerable that a good Samaritan, who takes to his home a wounded stranger for surgical aid, should be held personally liable for the negligence of his servant in caring for that stranger. Were the heart and means of that Samaritan so large that he was able, not only to provide for one wounded man, but to establish a hospital for the care of a thousand, it would be no

less intolerable that he should be held personally liable for the negligence of his servant in caring for any one of those wounded men."

Our hospitals are then favored by the law, and it is right that they should be. Obviously, they would not have been founded if their donors had known of, or even supposed, that their charitable purposes might be thwarted by the verdicts of juries for the negligent acts of those who must necessarily be employed in the execution of the charity. If the patient is maltreated, let him proceed against the one who has maltreated him, and prove it if he can. But he must let the hospital alone.

DOCTORS DUPED BY AGENTS OF A MEDICAL ALLIANCE.

It seems rather strange that it became necessary for the Indianapolis Medical Society to send notice by postal cards to its members informing them that a membership in what was known as the Medical Alliance of America would be considered non-ethical and a violation of the rules of society. It has been rumored that some of the members had joined such an organization and several months have passed since the notice was sent by order of the Indianapolis Medical Society. It is absurd that a circumstance should arise requiring this action. If any one thought there was an opportunity to get rich quick by deviating from ethical methods, they have surely enjoyed the fulfillment of the old adage, "Those who dance must pay the fiddler." It is said that about 100 business men and 75 physicians have been duped by two agents named Wilson and Barrows. It appears that the doctors were to pay an initiation fee of $10 and $1.00 a year dues and furnish to the "Alliance" a list of their patrons. Now the agents required the patrons of physicians in order to become members to pay to the "Alliance" an initiation fee of $1.00 and weekly payments of fifteen cents. In return patrons were to receive free medical attention, medicines and necessities during their illness. The doctors were to be recompensed by the "Alliance." It is said that the agents realized about $3,000 by the scheme and now the office is closed for repairs, the whereabouts of the agents are unknown and the doctors are out of pocket.—The Medical and Surgical Monitor, April 15, 1903.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

NEW JERSEY STATE MEDICAL EXAMINERS.

The State Board of Medical Examiners of New Jersey has secured amendments to the medical practice act of the state by which the academic standards for admission to the state examinations have been raised from a competent school education to a diploma issued after four years of study in a normal, manual training or high school of the first grade in that state, or its equivalent. The medical requirements have been increased from three to four courses of medical lectures, of at least seven months each, in different calendar years, prior to receiving the degree of doctor of medicine. The amendments go into effect on July 4th next. After that date candidates for examination or for indorsement of a license issued by a recognized examining board of another state will be obliged to comply with the new standard of requirements for a New Jersey license.

MONTANA REPORT.

Dr. W. C. Riddell, secretary of the Board of Medical Examiners of Montana, reports the examination held at Helena, April 7 and 8, as follows: Number of subjects examined in, 10; total number of questions, 50; percentage required to pass, 75; written examination, total number examined, 25; passed, 17; failed, 8.

The board resolved to discontinue issuing temporary licenses, and not to reciprocate with any other state before the next meeting, October 6, 1903.

RECIPROCITY IN VERMONT.

"An Act in Amendment of Section 4633 of Chapter 190 of the Vermont Statutes Relating to the Practice of Medicine and Surgery.

"It is hereby enacted by the General Assembly of the State of Vermont:

"Section 1. Section 4633 of the Vermont statutes is hereby amended to read as follows: 'Section 4633. Each board of censors shall issue certificates to physicians and surgeons who personally present to such board a diploma from a medical college or university, and who, also, by examination, satisfy such board of censors that they are qualified to practice the branches mentioned in said diploma; and to such physicians and surgeons, without examination, who shall personally appear and present a certified copy of certificate of registration or license which has been issued to said applicant in another state of the union, where the requirements for registration shall be deemed by said board equivalent to those of this state; provided, such state shall accord a like privilege to holders of certificates from a board of censors of this state.'

"Section 2. Each applicant for such examination or certificate shall pay to such board of censors the sum of five dollars.

"Section 3. All acts or parts of acts inconsistent with this act are hereby repealed.

"Section 4. This act shall take effect from its passage."

SECRET MEDICINES IN JAPAN.

Very stringent laws have been enacted in Japan in regard to secret proprietary medicines. The importation of those containing poison from which accidents may result is absolutely prohibited, as is also the sale of those that have deteriorated. The retailer must be informed in regard to the ingredients, proportions and doses, and must specify them in applying to the authorities for permission to sell the medicines.

OSTEOPATHY IN NEW MEXICO.

Graduates of an institution of osteopathy, requiring four courses of five months each, are now eligible to practice osteopathic-medicine and osteopathic-surgery in New Mexico, but are precluded from using drugs or performing major surgical operations under penalty of committing a misdemeanor.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I MAY 1903 No. 8

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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EDITORIAL NOTES

Practice of Medicine Defined.

In compiling data for an article for the Medico-Legal Bulletin, which shall comprise and compare the legal definitions of the practice of medicine, as promulgated by the various legislatures and as construed by the various courts, we have been very favorably impressed with the definition as accepted by the state of Arizona. We believe that this construction can be accepted by most of the states of the Union, as it certainly would unquestionably establish a status of the Healers, Eddyites, Osteopaths, etc.

This definition appeals so forcibly to us that we herewith present the same in full, although it may appear later in an article as above stated:

"Any person shall be regarded as practicing medicine within the meaning of this act who shall, within this territory, (a) by advertisement, or by any notice, sign or other indication, or by any statement written, printed, or oral, in public or in private, made, done, or procured by himself or herself, or any other, at his

or her request, for him, or her, claim, announce, make known or pretend his or her ability and willingness to diagnosticate or prognosticate human diseases, ills, deformities, defects, wounds or injuries; (b) or who shall so advertise, or make known, or claim his or her ability and willingness to prescribe or administer any drug, medicine, treatment, method or practice, or to perform any operation, or manipulation, or apply any apparatus or appliance for cure, amelioration, correction or reduction or modification of any human disease, ill deformity, defect, wound or injury, for hire, fee, compensation or reward, promised, offered, expected, received or accepted, directly or indirectly; (c) or who shall within this territory diagnosticate or prognosticate any human diseases, ills, deformities, defects, wounds or injuries, for hire, fee, reward, or compensation promised, offered, expected, received or accepted directly or indirectly; (d) or who shall within this territory prescribe or administer any drug, medicine, treatment, method, or practice, or perform any operation, or manipulation, or apply any apparatus or appliance for the cure, alleviation, amelioration, correction or modification of any human disease, ill, deformity, defect, wound or injury, for hire, fee, compensation, or reward, promised, offered, expected, received or accepted, directly or indirectly; (e) or who shall act as the agent of any person, firm or incorporation, in the practice of medicine as hereinbefore set forth, except it be in the advertisement of practice of dentistry, midwifery, or pharmacy, or in the usual business of opticians, or of venders of dental or surgical instruments, apparatus or appliances. Any person or persons violating any of the provisions of this act upon conviction thereof shall be fined in any sum not less than one hundred ($100) dollars, nor more than one thousand ($1,000) dollars, or by imprisonment in the county jail for a period of not less than three (3) months, nor more than (1) year, or both such fine and imprisonment, at the discretion of the courts."

DECISION BY THE GERMAN COURT OF HONOR.

A fine of $375, the limit in its power to impose, has been assessed by the Dresden Medical Court of Honor against a regularly qualified physician of that city. The physician had previously been reprimanded by the court for co-operating with the notorious charlatan, Bilz, and having since affiliated, the fine was imposed.

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

MEDICAL ATTENDANCE ON HUSBAND A FAMILY NECESSITY.

The Supreme court of Nebraska holds, on rehearing, in the case of Leake vs. Lucas, that the husband, while living with his wife, is part of the family, and medical attendance of which he stands in need is a family necessity, within the meaning of section 1 of chapter 53 of the Compiled Statutes of Nebraska, which makes the unexempt property of a married woman liable for the payment of all debts contracted for necessaries furnished her family after execution against the husband for such indebtedness has been returned unsatisfied for want of property. And it holds that where medical attendance is furnished the husband under the circumstances above stated, and while the family are residing in Nebraska, and the family afterward remove to a sister state, a judgment against the husband in the state to which he has removed, and the return of an execution unsatisfied, is a sufficient compliance with the Nebraska statute to entitle the creditor to proceed against the wife (in Nebraska) for the collection of his demand.

MEDICATION BY LAW.

In the police court in Cincinnati a warrant was issued on March 30th, compelling a certain John Townes to take treatment and medicine for a severe case of grippe. The warrant was issued on the petition of the sister-in-law of the patient, who feared that his brain was affected, since he refused to take either food or medicine. The patient was taken to the City hospital and there compelled to take medicine under the warrant, which charges disorderly conduct.

RESPONSIBILITY FOR DEATH UNDER AN OPERATION.

A decision which will be regarded with a great deal of interest by members of the medical profession was handed down on February 11 by the Appellate division of the Supreme court in the suit of Alice Wood, as administratrix of the estate of Robert Wood, against Dr. John A. Wyeth and Dr. W. H. Landon White, both well known city physicians and surgeons. The suit was brought under the provisions of section 1902, of the Code of Cvil Procedure, to recover damages for the alleged negligent treatment of a boy named Robert Wood by the defendants as physicians and surgeons, resulting in his death. The plaintiff contended that the child died while under the influence of chloroform carelessly administered. The trial of the action resulted in a verdict in favor of Dr. White, but the jury disagreed as to Dr. Wyeth, and the trial justice finally dismissed the complaint upon the merits as to the latter. A motion by the plaintiff for a new trial is denied, and counsel for the administratrix took an appeal to the Appellate division. The judgment and orders have now been reversed and a new trial granted on the ground that the trial court was right in leaving the case to the jury, and erred in subsequently dismissing the complaint, after the jury failed to agree. The judgment, however, is rendered by a divided court, Justices Bartlett, Hirschberg and Jenks agreeing on the question of the propriety of the reversal, Justice John Woodward and Presiding Justice W. W. Woodrich dissenting.—New York Medical Journal.

NO DAMAGES FOR X-RAY BURNS.

William Henslin brought suit against Dr. Wheaton, Dr. Rogers and Dr. Dennis, of St. Paul, on the ground that he had been prematurely injured by burns caused by the use of X-rays in an effort to discover the location of a gold tooth crown which had been swallowed by the patient. It was proved that after exposure to the X-rays a sore had developed on his back, which, however, had been completely cured, though the plaintiff claimed that he had been permanently injured and brought suit to recover $22,500 for the injuries inflicted. Judgment has been rendered for the defendants on the ground that the evidence was not sufficient to prove damage.

LAW OF SLANDER.

Miss Anna E. Carpenter, a young school teacher of Axtel, received a vindication at the hands of the Supreme court in the form of an approval of her judgment against Dr. F. W. Whiting, for slander. The judgment was for $475 damages, and the court says if it had been several times as large it would have been constrained to make the same finding. After this case was appealed to the Supreme court by Dr. Whiting, the lady's friends filed a complaint with the State Board of Health asking that his license to practice medicine be revoked on the ground of betrayal of confidence and unprofessional conduct, as the lady's physician, Dr. Whiting, made statements reflecting on her reputation. The state board indicated that it would revoke the license regardless of the truth of his statement, it being the opinion of several members that the betrayal of confidence by a physician constitutes dishonorable and unprofessional conduct within the meaning of the law. Dr. Whiting promised to leave the state and the State Board of Health did not try the complaint.

In the damage case one defense of the doctor was that he made his statement for the protection of society. Another defense of a contrary nature was that he was delirious when he spoke and did not realize what he was saying.

On the trial below, the plaintiff, Miss Carpenter, waived the right to object to Whiting testifying because of his relation to her as physician, because, as she says, if she had stopped his mouth in this way, he would have claimed afterwards that he could have proved it if he had a chance. She charged that Whiting, simply to degrade her, had deliberately and with malice, sought to blast and ruin her name on the excuse that in his opinion she stood better in the community than she ought.

The court reviews the case at length and holds with the woman in every particular.

In the case of Larson vs. Cox, from Dawes county, where the plaintiff sues for damages because of words spoken that imputed larceny to him, the court holds that under section 123 of the code the truth of spoken defamation is a complete defense. The lower court, says the opinion, holds that the evidence warranted the conclusion that he did commit the offense; this being so, the judgment is right, no matter whether the motives of the man were good or the statement made for justifiable ends.

In the opinion Judge Sullivan discusses the law of libel and slander at some length. He thinks that the constitution of 1875,

when it said that "in all trials for libel, civil and criminal, the truth when published with good motives and for justifiable ends, shall be a sufficient defense," intended to place restraint upon the freedom of the press and partially repealed section 132, although the truth of a defamatory publication is still a complete and perfect defense in criminal cases, irrespective of motive or object of publisher. The same is true of spoken defamation.—Lincoln Medical Outlook, April 15, 1903.

FARBENFABRIKEN COMPANY, OF GERMANY, IN FEDERAL COURT.

In the United States Circuit court, at Cincinnati, Ohio, Judge A. C. Thompson granted an injunction on behalf of the Farbenfabriken of Elberfeld, Germany, against the W. S. Merrell Chemical company, for the infringement of certain patents in drugs owned by the complainant. The drugs involved are aristol and phenacetin, which are coal tar products that have been prepared by a secret process owned by the complainants. The latter possess patents on a large list of coal tar products which are used by the medical fraternity, and which have become well known to the medical world. This is only one of a number of suits that it is intended to institute, the majority of which will be against prominent druggists who are selling the article as furnished by others. The complainant company has a large list of persons against whom it will proceed at once.

The case brought by the company against Druggist John Bauer, of East Walnut Hills, Cincinnati, has not yet been disposed of. The matter is still before a special master commissioner, who is taking testimony according to the decree of the Federal court, which granted an injunction against him to ascertain the amount of damages.

CONSENT IN EMERGENCY OPERATIONS.

The military medical authorities at St. Petersburg have notified all the surgeons and hospitals under their jurisdiction that in emergency cases, when it is impossible to secure the consent of the unconscious subject and his family live too far away for their consent to be obtained, the official approval of the physicians of the hospital shall be regarded as equivalent to the consent of the interested parties.

ETHICS OF TREATING THE PATIENT OF ANOTHER PHYSICIAN.

A decision of the Prussian Medical Court of Honor in a recent case proclaimed that every physician is entitled to undertake treatment of all who apply to him in his office hours without regard to whether they have already consulted another physician or not. Also there is no ground for a general obligation on the part of the physician that he must inform himself in regard to whether a patient applying is already under the treatment of another physician. Only when special circumstances arise that indicate previous application for medical aid is such inquiry called for. When the physician knows that the applying patient is already in the care of another physician, it is obligatory on him to inform the latter that he has taken charge of the case.

SUIT FOR WRONG DOING.

Two homeopathic physicians of Oroville, Cal., have been sued for $25,000 damages on account of an alleged "bungling and negligent attention and mistake in diagnosis." The services were rendered to the deceased husband of the plaintiff.

NORRISTOWN HOSPITAL WINS.

The Supreme court of Pennsylvania has decided in favor of the Norristown hospital, the suit long pending against the city of Philadelphia. The action was for care of insane patients, amounting to $67,000.

VERMONT HOSPITAL SUED.

Alleging the death of his wife as the result of severe pounding and bruising, administered by W. W. Brock and Mrs. L. K. Rosselle, John S. Wilkens, of Burlington, Vt., has brought suit for $10,000 damages.

PHYSICIAN SUED AT COUNTY'S EXPENSE.

Martha E. Jacobs, residing in Chicago, Ill., has petitioned the Circuit court of Cook county for permission to bring suit as a poor person against Dr. E. L. Smith, for $10,000 damages. Plaintiff alleges negligence and carelessness in setting broken bones.

FIRM SUED.

Suit for alleged malpractice in an operation and after-treatment has been brought by J. W. Bowden against "Dr. Roland Register & Co., Memphis, Tenn., with damages of $10,000.

A PHYSICIAN'S SUIT AGAINST A TELEGRAPH COMPANY.

Dr. Howard A. Kelly, of Johns Hopkins, has entered suit against the Western Union Telegraph Company for the sum of $2,000 damages, in consequence of the alleged neglect of the company to deliver to him telegrams requesting his professional attendance for an important surgical operation, in Cambridge, Md., on October 13, 1902.

VALUABLE TEETH.

Richard K. Fox, proprietor of the Police Gazette, is suing the Metropolitan Street Railway, New York City, to recover $10,000 for the loss of two teeth as the result of a fall he received when alighting from a street car in December, 1900.

DOCTOR SUES FOR $10,000.

It is averred that Dr. Rhinehart, of Pittsburg, has entered suit against W. C. Jute, of that city, to recover $10,000 for medical services. The plaintiff avers that he was physician to the Jute family, and some time ago it became necessary for him to give up all other medical practice and accompany the defendant to Europe as his physician, service being rendered from July 8, 1902, to September 26, 1902.

SUIT FOR AUTOPSY.

A decision was recently rendered in favor of the Massachusetts General hospital in an action brought for $2,000, in which the plaintiff alleged that on account of an autopsy of the deceased, a Hebrew, certain religious rites were rendered impossible.

Th defense maintained that permission for autopsy had been granted.

Legislation.

The Medical Profession and the Legislature.

Amended Nebraska Law.—The medical practice law of Nebraska has been amended by the Legislature at its late session so as to read:

Section 19. Every holder of a diploma from a recognized medical college within the state of Nebraska, making application for an examination and a certificate under the provisions of this act, shall pay to the board of secretaries prior to his examination the sum of ten dollars ($10.00). All other persons making such application shall pay to said board the sum of twenty-five dollars ($25.00). All such fees shall be equally divided among the four secretaries of the board as full compensation for their services and expenses. For the taking of any testimony each of the secretaries shall be entitled to charge and receive such fees as are provided for notaries public for similar services. No part of such fees shall be paid out of the state treasury.

Section 7. It shall be unlawful for any person to practice medicine, surgery or obstetrics or any of the branches thereof, in this state, without first having applied for and obtained from the state board of health a license so to do. Application therefor shall be in writing, and shall be accompanied by the examination fees hereinafter specified and with proof that the applicant is of good moral character. Applications from candidates who desire to practice medicine and surgery in any or all their branches shall be accompanied by proof that the applicant is a graduate of a medical school or college in good standing, as defined in section eight (8) of this article. When the application aforesaid has been inspected by the board and found to comply with the foregoing provisions, the board shall notify the applicant to appear before it for examination at the time and place mentioned in such notice. Examinations may be made wholly or in part in writing by the board and shall be of a character sufficiently strict to test the qualifications of the candidate as a practitioner. The examination of those who desire to practice medicine and surgery in any or all their branches shall embrace

those subjects and topics, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine, by reputable medical colleges in the United States. All examinations provided for in this act shall be conducted under rules and regulations prescribed by the board, which shall provide for a fair and wholly impartial method of examination. It is also provided that examinations on practice of medicine and therapeutics shall be conducted by the member or members of the board of secretaries who are of the same school of medicine as the applicant. And it is further provided, that the said state board of health may, at their discretion, admit, without examination, legally qualified medical practitioners, who hold certificates to practice medicine in any state with equal requirement to those of the state of Nebraska.

Section 10. If upon investigation of the proofs submitted to the board, and after the examination, as hereinbefore provided, the applicant shall be found entitled to practice, there shall be issued to said applicant the certificate of said board under its seal and signed by its secretaries stating such fact, and it shall be the duty of the applicant before practicing to file such certificate or a copy thereof in the office of the county clerk of the county in which he or she resides or in which he or she intends to practice; such certificate or copy shall be filed by the county clerk and by him recorded in a book kept for that purpose, properly indexed, to be called the "Physicians' Register," and for such services the county clerk shall receive from the applicant the same fees as are allowed to the register of deeds for the recording of conveyances.

The New Oklahoma Law.—The recent Oklahoma Legislature passed a new law regulating medical practice in that territory. It provides for a territorial board of health, consisting of three reputable physicians appointed by the governor, one of whom is to be a salaried official with the designation of superintendent and to be ex-officio the secretary. The law provides that the board shall meet every three months, due notice of time and place having been given. Aside from its other duties as a board of health, the board is to examine applications and grant licenses to practice medicine, and the act specifies the following conditions:

Section 5. No person hereafter shall practice medicine or surgery in this territory without first obtaining a license from the territorial board of health. Application for license shall be made in writing, together with a fee of $5, accompanied by a

proof of good moral character, and proof of ten years' continuous practice, or proof of graduation from a reputable medical college. When the application has been inspected by the board and found to comply with the foregoing provisions, the board shall notify the applicant to appear for examination at a time and place designated in such notice. Examination shall be made in whole or in part in writing and be sufficiently strict to test the applicant's qualifications to practice medicine. All members of the board shall be present and participate in such examination. It shall be the duty of the person holding such license to register in the office of the register of deeds. in a book kept for that purpose, in the county in which the person resides or intends to practice. Provided, that an osteopath shall not be required to pass an examination in materia medica or therapeutics.

Section 6. Any person practicing or offering to practice medicine or surgery in any of their branches, without first having obtained a license from this board, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be fined in any sum not less than $50 nor more than $100, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment at the discretion of the court, and all costs incurred therein.

Section 7.—The provisions of this act shall not affect the rights of persons now legally practicing medicine, osteopathy or surgery in this territory; nor shall it prohibit the application of domestic remedies by one member of a family to another thereof; nor administering of remedies by another in case of emergency, without compensation; nor shall it apply to any commissioned medical officer of the United States army, navy or marine-hospital service, in the discharge of his official duties; nor to any legal qualified dentist, when engaged exclusively in the practice of dentistry; nor to any physician or surgeon from another state or territory who is a legal practitioner of medicine or surgery in the state or territory in which he resides, when in actual consultation with a legal practitioner of this territory; nor to any physician or surgeon residing on the border of a neighboring state or territory and duly authorized under the law thereof to practice medicine or surgery therein, whose practice extends into the limits of this territory: Provided, that such practitioner shall not open an office or appoint a place to meet patients or receive calls within the limits of this territory; nor to any osteopath who shall pass examination in the subject of anatomy, physiology, obstetrics and physical diagnosis in the same manner as required of other applicants before the terri-

torial board of health, and who has thereupon received a certificate from the board which, when filed with the register of deeds, as is required in the case of other certificates from the board, shall authorize the holder thereof to practice osteopathy in the territory of Oklahoma, but shall not permit him to administer drugs nor to perform major surgery.

NEW MEDICAL LICENSE LAW IN NEBRASKA.

A new medical law has been passed by the Legislature providing for an examination for all candidates for license to practice medicine in Nebraska, and will go in force August 1st, 1903.

The applicant must be a graduate of a reputable medical college and pay a fee of $10.00.

The secretaries of the State Board of Health will be the examining board. These secretaries are, in reality, the State Board of Health, and are four physicians, two of the Allopathic school, one Eclectic and one Homeopathic, each of whom are appointed by the governor upon the endorsement of their respective state medical societies, and hold office for four years. Heretofore the law required a diploma only; and the board met at Lincoln on the first Thursday of each month, which it will likely continue to do. This state will now be in line with many other states to do business relative to the reciprocity idea, as it is no more than right that the privilege to practice should be extended to a licentiate of any state by any other state whose laws are comparatively the same, and the sooner an understanding is arrived at by the various states the better. As soon as organization between states can be effected on the reciprocity plan, unity can be maintained on an equal footing by providing for an examination committee whose business it will be to prepare the examinations for the different states, so that they all may be alike. This may eventually be done and if the respective national medical bodies would take the matter up, which they should do, then the matter could be settled promptly and equitably.

TENNESSEE STATE EXAMINING BOARD.

At the recent examination of applicants for license to practice medicine held at Nashville, Tenn., thirty-one out of the one hundred and fifty-four applicants failed to pass. The board authorized the secretary, Thomas J. Happel, of Trenton, to compile a new directory of the physicians of the state.

ARIZONA'S LAWS.

Contrary to what appears to be a general impression that Arizona has no law governing the practice of medicine, we note an act of that territory regulating medical practice. It appears that before one can legally practice medicine he must have obtained a diploma regularly issued by a medical college legally organized under the laws of the state or territory wherein such college should have been located at the time of issuance of diploma; or shall have passed a state's examination under certain provisions of the territorial law; or shall have practiced medicine for five consecutive years in the territory of Arizona, immediately preceding the act. He must be a bona fide resident of Arizona and shall have attained the age of 21 years. The act authorizes a Board of Medical Examiners for Arizona, which shall consist of five members appointed by the governor, three of whom shall be physicians of the regular school and one of the eclectic school of medicine. All candidates for examination to practice are given the same questions in physiology, anatomy, pathology ,chemistry, practical surgery, obstetrics and gynecology. In other subjects they may elect to take the examination from the member of the board which represents their respective school of medicine. License granted by the Board of Medical Examiners may be revoked by them at any time for grossly immoral or unprofessional conduct, after due hearing has been given the accused.—American Medicine, April 25, 1903.

AN ACTION TO TEST THE IOWA ITINERANT LAW.

Alleging that the law which discriminates between local and itinerant physicians violates the state constitution and the fourteenth amendment of the constitution of the United States; Dr. Benj. A. Stockdale, of Council Bluffs, has brought suit against the treasurer of the state of Iowa for the recovery of $250 paid as license fee as an itinerary physician.

FOREIGN PRACTITIONERS MAY BE EXCLUDED FROM ITALY.

The project is being discussed in Rome making the possession of an Italian diploma a pre-requisite to entering upon the practice of medicine in Italy.

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JUNE 1903

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I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

Date.....190... (Applicant's Signature).....

* Cross out professions not practiced.

Received H. O. *Issued*

CAPITAL STOCK
$100,000.00

INCORPORATED UNDER THE LAWS OF INDIANA.

THE Physicians Defense COMPANY

ELEKTRON BUILDING

FORT WAYNE, INDIANA.

In Consideration of the written and printed application which is hereby made a part of this contract and the sum of Twenty Dollars receipt of which is hereby acknowledged being the consideration for one year's defense and the further payment of Twenty Dollars annually in advance on the _____ day of _____ of each year during the life of this contract

THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract and to pay all the cost and expense of defending such suits not exceeding **FIVE THOUSAND DOLLARS** in defense of any one suit not exceeding in the aggregate **TEN THOUSAND DOLLARS** in defense of suits based on services rendered within one year from the date of this contract or within any one year for which this contract shall be renewed all in the manner and upon the conditions herein below stated to wit:—

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__

A. F. Buchman,
President.

_____
Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

Physicians' Fees.

Every physician and surgeon has more or less experience with the non-paying class of patients. There are many in this class and they are not only indifferent to the appeals of the physician, but also to the officers of the law who seek to enforce a judgment obtained for the services. Often the physician understands these peculiarities of the particular patient and treats him with the understanding, or, upon the assumption, that some third person will look after the compensation. This third person may be a parent or other kin, or an entire stranger; and it may be of interest to discuss for a moment under what circumstances the third party can be held to the payment of services rendered patients.

By the common law of England no physician in that country could recover for his fees. There was an early English case in 1791 in which the question was hotly contested. Prior to that time there were no decisions to that effect and there was no authority for it in the books. But Lord Kenyon in that case decided that the physician could not maintain his action, because it had been understood that the fees of physicians were honorable and not demandable of right; that it was much more for the credit and rank of that honorable body that it should be so understood; and his lordship seemed to doubt whether the physicians would not disclaim a right which would place them in society on a footing with common men.

The meaning of this rule is, that the rendering of services on request, as by answering a summons by messenger to call,

raised no implied promise to pay for them. But it did not prevent the patient from binding himself by express contract to compensate the physician. In other words, the physician must first get the express promise of his patient to pay him before he could make a demand for compensation. If the patient refused after the services were performed there was absolutely no chance of recovering any fees at all.

This rule controlled as to the physician's rights until 1858 when the Medical Act was enacted which gave him the right to sue on the implied contract, subject to the right of the College of Physicians to regulate this privilege by by-law.

The common law of England was adopted by the United States and we have made it the rule of our decision, so that it seems, at first thought, that this English common law rule would be found in the United States. We adopted the common law qualifiedly only. We took so much of it as is of a general nature and not local to that kingdom, and not inconsistent with our own laws, and not contrary to and inconsistent with the spirit of our own practice and institutions. This rule was clearly inconsistent with our institutions, since the latter are based on the great and broad principles of liberty and equality and no distinction is made in regard to our people. All belong to one class. The rule was, therefore, never adopted in this country with the exception of the state of New Jersey, in which it existed for a short time; but the profession at large has always been able to maintain its action for services whether there was an express contract to pay or not. Throughout our country now, the employment of the physician without express agreement to compensate him raises an implied agreement on the part of the employer to pay for the services, on which a quantum meruit (or a suit to recover the amount the services are worth) will lie.

This settles the right of the physician to sue some one for his services. The physician, of course, must bring his action against the employer, or, if there is a guarantor of or a party responsible for the compensation, he may proceed against him. The patient may be a minor child, or a wife, or a ward, or a servant, and the physician and surgeon may be called in by a third person who may or may not be responsible for the services according to the relation which he bears to the patient and to the physician. The patient may be utterly irresponsible or unknown to the physician, but the fact that the latter was called by a third person whom he knew or knew to be responsible may lead him to respond. The question is, what is the status of third parties as to their liability for the services rendered?

The first relationship is that of husband and wife. The husband is the head of the family and it is his duty to provide the necessaries for the maintenance of the household. Medical services for the wife are such ncessaries and, of course, must be compensated by him whether he employs the physician himself or by some one else at the instance of the wife. He is impliedly liable, and it makes no difference whether the wife has her own separate estate or not. If the physician performs the services upon the credit of the wife and the facts all tend to show that credit was so given, then the husband is not liable for the services. But this would be a difficult matter to prove unless the contract was made by an express agreement with her. The fact that the physician made his charges on his books in the wife's name is not sufficient to show that he charged his services to the wife exclusively. The husband is still liable unless something more is brought out to show the circumstances of the employment.

The wife is liable for services performed for herself when the contract is made with her and on her credit and she has a separate estate out of which they can be paid. She is also liable for services rendered to her husband or her infant children when he is a lunatic or insane or wholly incapacitated from furnishing any support to the family. A recent case in Nebraska holds that the wife is liable when the husband is incapacitated from work, as the services are a necessary charge upon the family funds which were furnished by the wife.

The husband is also liable for services furnished to his children. This general statement must be limited to services performed for his minor children because of the relation of parent and child. This obligation is lifted when the child becomes of age and consequently with it goes the freedom from liability for services performed for him thereafter. In short, when a father summons a physician to attend his child the father is impliedly liable if the child is under age, but not, if the child is of age. He can render himself liable, of course, in case the child is of age, by expressly agreeing to pay for the services when he summons the physician or thereafter; but in the absence of an express agreement to pay, or of circumstances showing an implied promise to pay, he is not liable for such services.

Another relationship in which the employment of a physician frequently enters is that of master and servant. Often a physician is called by an employer to come to his home to treat his servant, or to his place of business to treat his employe who is sick or has been injured. The relationship in each case is

the same, and the same rules govern each. The master is not bound to furnish medical attendance, but he can bind himself to pay for the services by express or implied agreement, just as the father can bind himself to pay for services rendered to his adult child. In the absence of that contract, which is always a matter of proof, there is no liability whatever. In the case of a corporation employing a physician to attend an employe the usual rules of agency apply. To render the principal—the corporation—liable for such services they must be rendered upon its credit through the direction of an agent who has authority to bind it. As to what the agent must be before the corporation can be held there is great difference of opinion in the law. The officer, or agent, as a general proposition of law, cannot bind his company by any act which is outside the scope of his authority. What the scope of that authority is depends upon the character of the corporation and of the business transacted by it, the general functions of the particular officer or agent, any special provisions or instructions conferring or defining his authority, and all the circumstances of the case. So that no definite rule can be laid down as to the power of the officer or agent to bind the principal. There are numerous cases in the various states which hold that one officer or another may bind a company for such services, such as the general superintendent, or general agent, or general manager, and men of equivalent authority. Other cases hold that inferior officers or agents of a company cannot so bind it, unless there is an emergency and no superior officer is on the ground to make the contract. Among these inferior officers and agents have been named a conductor, and an engineer of a railroad corporation, an attorney, and a manager of a factory. The corporation can, of course, ratify through a superior officer the employment of such inferior officers or agents and thereby make itself liable for the fees, but unless it does ratify the employment, the physician must look to the patient for his compensation and not to it. Oftentimes this means gratuitous services unless the physician gets his directions to treat the patient from someone having authority to employ him. Hence the importance of being sure the employment comes from the man highest in authority connected with the corporation or individual employer.

Employment occasionally comes through a third party having no relation to the patient. and it may be that while the patient has nothing, the third party is financially responsible, and if the fees are to be recovered at all they must come from this third party. If such a person can be held liable for the services

so rendered it can be done on one of two grounds only; either that he expressly promised to pay the bill or the promise is inferred from the circumstances of the employment. An express contract is usually not difficult to imagine or prove, as it may be in writing or by direct word of mouth which can be proved. The difficulty comes, however, when there is no express agreement, but whatever promise there is must be inferred from the nature of the employment, the conversation had, or acts or conduct at the time.

There was adopted in England during the reign of Charles II a statue called the Statute of Frauds, two sections of which have been adopted quite generally throughout the United States. Among other things is provided "no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized." This means that when a man promises to pay the debt of another he must do so in writing and sign it himself or by his authorized agent, before any liability for that debt can be enforced against him; and if there is no writing signed by him, but he verbally promises to pay the debt, there is no liability thereby created. There must be a liability actual or prospective of a third party for whom the promisor undertakes to answer; as when two people come to a store, one buys and the other, to gain him credit, promises the seller, "If he does not pay you, I will." This is a collateral undertaking and no liability will be incurred by the promisor unless it is put in writing and he signs it. But should the third party say, "Let him have the goods, I will be your paymaster," or "I will see you paid," he is making the agreement as for himself, and stands as the buyer and the other acts as but his servant. The liability may be prospective at the time the promise is made, but it must come into eistence at some time, else there is no suretyship, and the promise, though not in writing, will nevertheless be actionable, as when A says to B "If I am to do work for C I must be assured of payment by someone," B says to A, "Do it and I will see you paid." There is no suretyship for B makes the contract of employment between himself and A and binds himself to pay it.

The employment of a physician to treat a patient is, in the majority of cases, by a third party, so that it may come within this statute; and consequently it may be important to know what the contract really is that is being made so that the right to

hold the third party liable for the services will not be lost. This depends entirely upon whether or not the third party is guaranteeing payment or is directly assuming it. If he is guaranteeing payment, as when he says "I will pay you if he does not," that agreement must be in writing or else there can be no recovery had from him; but if he promises to pay the bill without condition, or without the necessity of calling on the patient for the compensation, the promise is not a guarantee and need not be in writing. An example of this would be when the third party calling the physician says, "You go to see so and so and treat him, and I will see that you are paid your fees," and the like. Here the third party does not guarantee the payment of the bill by the patient, but directly assumes it.

The simple calling of a physician by a third party to visit another does not raise the implied promise on the part of that third party to pay the reasonable value of the services so rendered, unless the relation of the person making the request, to the patient is such as raises the legal obligation on his part to call in a physician and pay for his services. The question is one for the jury to determine in each case; the circumstances in each particular case must control and it must be determined from them whether or no the implied promise can fairly be said to exist. If nothing is said by the third party except to direct the physician to call upon the patient, there would probably be no liability incurred by him unless he was explicit to state that he wanted the physician to call upon the patient. If the third party is explicit to state that he wants the physician to call upon a certain person, there would perhaps be liability incurred by him, particularly if the third party is well known to the physician while the patient is not.

But it is not safe to trust to all this. The physician, to protect himself, ought to be careful in this regard. He ought to do one of two things, when he is called by a third party to treat a patient, the third party being one not legally bound to call him, to get the third party to guarantee in writing the payment of the fees before he responds or during the performance of the services, or be sure that the third party makes statements, in the presence of someone connected with the physician's office, which will show that he intends to pay the bill himself. If this is done, there will surely be less gratuitous work done and the non-paying patient, who is usually the first to bring suit for malpractice, will grow more respectful to the profession, for certainly a man's health does not deserve any more gratuity than his stomach or back.

NEW SUBSTITUTION BILL PASSED BY NEW YORK SENATE

Any person who, in putting up any drug, medicine, food or preparation used in medical practice, or making up any prescription or filling any order for, or selling any such drug, medicine, food or preparation, omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, a bottle or other package containing a drug, medicine, food or other preparation used in medicinal practice, or substitutes or dispenses a different article for or in lieu of any article prescribed, ordered, required or demanded, or puts up a greater or less quantity of any ingredient specified in any such prescription, order, requirement or demand, than that prescribed, ordered, required or demanded, or otherwise deviates from the terms of the prescription, order, requirement or demand, is guilty of a misdemeanor; provided, however, that, except in the case of physicians' prescriptions, nothing herein shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other article in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. Upon a second conviction of a violation of this section the offender must be sentenced to imprisonment for a term of not less than ten days nor more than one year, and to the payment of a fine of not less than ten dollars nor more than five hundred dollars. The third conviction of a violation of any of the provisions of this section, in addition to rendering the offender liable to the penalty prescribed by law for a misdemeanor, shall forfeit any right which he may possess under the law of this state at the time of such conviction, to engage as proprietor, agent, employe or otherwise, in the business of an apothecary, pharmacist or druggist, or to compound, prepare or dispense prescriptions or orders for drugs, medicines, foods or preparations used in medical practice; and the offender shall be by reason of such conviction disqualified from engaging in any such business as proprietor, agent, employe or otherwise, or compounding, preparing or dispensing medical prescriptions or orders for drugs, medicines, foods or preparations used in medical practice.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

OHIO OSTEOPATHS NOT AUTHORIZED TO VACCINATE.

The Ohio State Board of Health has sustained the contention of Dr. Metz, of Cincinnati, that an Osteopath, under the Ohio laws, has no right to perform surgical operations even of as minor form as vaccination.

GRADUATES GET LICENSE WITHOUT EXAMINATION.

Graduates from the Indiana medical colleges who matriculated before January 1, 1901, receive their license without examination under the presentation of a diploma from a reputable institution. After January 1, 1905, all graduates will have to take an examination before they can obtain a license.—Med. & Sur. Monitor.

DISTRICT OF COLUMBIA.

The Secretary of the Board of Medical Supervisors of the District of Columbia reports the recent examination held at Washington, as follows: Subjects 17; 80 written questions; percentage required, 75; examination was partly oral and partly written; total examined, 14; passed, 9; failed, 5.

UTAH STATE EXAMINING BOARD.

At the April meeting of the Utah State Board of Medical Examiners, thirteen applicants for license were present, all of whom, except one, were passed. At this meeting the board was reorganized by the election of Dr. E. S. Wright, president; Dr. R. W. Fisher, secretary, both of Salt Lake City, and Dr. Stringham, of Bontiful, treasurer.

NEW HAMPSHIRE.

The next examination will be held in Concord, June 23-24. By an amendment to the medical registration law, enacted by the legislature at the session of 1903, hotel physicians, employed by the landlord of a summer hotel in the care of his guests or employes, will hereafter be obliged to secure a license to practice, in accordance with Chapter 63 of the Session Laws of 1897. This license can be obtained only by examination.

CALIFORNIA STATE EXAMINING BOARD.

At the annual meeting of the California examining board thirty-nine applicants applied for license to practice medicine. As the result of the examination twenty-five passed, twelve were rejected and two continued.

MINNESOTA STATE EXAMINING BOARD.

At the recent meeting of the State Board of Examiners held in Minnesota, twenty out of twenty-three applicants for license to practice medicine passed.

MONTANA REPORT.

Dr. W. C. Riddell, secretary of the Board of Medical Examiners of Montana, reports the examination held at Helena, April 7 and 8, as follows: Number of subjects examined in, 10; total number of questions, 50; percentage required to pass, 75; written examination, total number examined, 25; passed, 17 failed, 8.

The board resolved to discontinue issuing temporary licenses, and not to reciprocate with any other state before the next meeting, October 6, 1903.

TENNESSEE STATE EXAMINING BOARD.

At the recent examination of applicants for license to practice medicine held at Nashville, Tenn., thirty-one out of the one hundred and fifty-four applicants failed to pass. The board authorized the secretary, Thomas J. Happel, of Trenton, to compile a new directory of the physicians of the state.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I JUNE 1903 No. 9

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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EDITORIAL NOTES

NOTORIOUS SWINDLERS ARRESTED.

Reputable members of the medical profession will be pleased to learn that the perpetrators of the "St. Luke's Hospital" and the "Christian Hospital" swindles are at last in the grasp of the law.

One "Dr." A. C. Probert, an ex-convict, according to Captain Evans, of Chicago, from the Waupun penitentiary of Wisconsin, and his partner, "R. News Wood," were on June 10th, in Chicago, held to the Federal Grand Jury in two thousand dollars bail each, on charges preferred by the postal authorities of using the mails to defraud.

The "St. Luke's" hospital flourished at Niles, Michigan, until a special act was passed by the legislature sufficiently broad to reach and drive this fake, in 1901, out of business in that state.

Having secured a charter from the State of Illinois for the incorporation of the "Christian Hospital," the instigators of the Michigan fraud moved their headquarters to Chicago, where they

attempted to extend their field of operation, and where they were caught and will be brought to the bar of justice.

Large quantities of literature were mailed to members of the profession throughout the United States generally, except in the State of Illinois, which for some reason best known to the perpetrators, was exempt. The literature consisted of a copy of a catchy diploma, which was to be issued to the recipient; a circular, "Dollars to Doctors, or Diplomacy and Prosperity in Medical Practice;" a pamphelt entitled "Case Taking and Fee Getting," and a circular letter inviting the physician to become a member of the hospital staff. If the proposition was accepted the applicant was to pay from fifteen to twenty-five dollars for a certificate, which, it was pointed out in the circulars, would, by a judicious exhibiting of the pocket membership card accompanying the document, bring more dollars annually than the cost of membership. It was further proposed that the physician send patients to the hospital, and that the fees collected would be split with the doctor.

The letterheads and copy of diploma contained the names of a number of the leading surgeons of the west, together with an engraved picture of Dr. J. B. Murphy before a clinic. That the use of these were absolutely unauthorized is needless to state to our readers, in fact as soon as the matter was brought to the attention of Dr. Murphy he took immediate steps which resulted in the arrest of the perpetrators, and has secured an injunction in the Superior Court of Cook County, prohibiting the use of his name by the "Christian Hospital" or by the officers thereof.

Upon being brought before United States Commissioner Humphrey, Wood and Probert both waived examination and were held to the Federal Grand Jury. As the case will probably not be called before the October term of court the frauds will enjoy the hospitality of the state during the heated term unless they are able to furnish bonds in two thousand dollars each. The postal authorities report that they have letters from a number of physicians stating that they purchased certificates by reason of Dr. Murphy's name. Apparently there should be no difficulty in securing the conviction of these swindlers for using the mails to defraud, and it is sincerely to be hoped that they may be given the limit of the law.

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

WHAT CONSTITUTES "SOUND HEALTH."

In the case of Packard vs. Metropolitan Insurance Company the policy sued on contained a provision "that no obligation is assumed by the company prior to the date hereof, nor unless on said date the insured is alive and in sound health." The Supreme Court of New Hampshire says that it must be presumed that the parties intended by this provision what the words used by them ordinarily signify in common speech. What was meant by the words "sound health" was, evidently, not perfect health. "We are all born with the seeds of mortality in us." No definition can be given to these words that will apply in all cases. A mere temporary indisposition or ailment would not ordinarily be regarded as rendering the health unsound, within the meaning of these words when used in an insurance contract. Speaking generally, they mean the absence of any vice in the constitution, and of any disease of the serious nature, that have a direct tendency to shorten life; the absence of a condition of health that is commonly regarded as disease, in contradistinction to a temporary ailment or indisposition. Whether, in a given case, a person is of sound health, must, of course, depend on the circumstances of the case. The insured in this case was a boy of 10 years of age. After he was examined by the company's physician, and before the date of the policy, he "fell sick of a disease of the heart," from which he died within six months. Although the disease was one which it was said was not infrequent among children, and is frequently outgrown, it could not reasonably, the court says, be regarded as a temporary ailment, or as not of a serious nature. A person having such a disease would not be regarded as in sound health. The fact that the boy's mother, who was suing, was not aware of the nature of the disease, and that its nature was undiscoverable except by a physician, did not prevent it from rendering the boy's health unsound. Undoubtedly

the testimony of the mother and others that the boy had appeared to be in good health would be competent evidence on the issue of soundness, but it would not be conclusive. The testimony of physicians concerning the condition of his health, discovered by their examinations of him, would also be competent. If the boy was sick with consumption at the date of the policy, no one would say that he was in sound health.—Jour. A. M. A.

A PHYSICIAN GETS DAMAGES FROM A TROLLEY COMPANY.

Dr. Justin Herold, of New York, recently got a verdict for $12,000 damages against the Metropolitan Street Railway Company, in an action before the Supreme Court, for the crushing of his foot four years ago in a collision between the cars. The company's negligence was conceded; the only question for the jury, therefore, being the amount of damages due. The amputation was based upon the loss sustained by Dr. Herold in his practice in consequence of the injury.—New York Medical Journal.

UNJUST DECISION REVERSED.

Justice Hutchinson has set aside the verdict of $13,000 for alleged malpractice recently awarded against Dr. George W. Webster, President of the Illinois State Board of Health, and has granted a new trial.

DEFAULTING TREASURER SENTENCED.

J. Howard Clemenson, defaulting treasurer of the Pennsylania Epileptic Hospital and Colony Farm at Oakbourne, Pa., has been sentenced to eight years in the Eastern Penitentiary on the charge of embezzlement. The judge in his sentence said: "The man who stole from the poor, weak, and sick, deserves no consideration." The default amounted to about $25,000.

AUSTRALIAN PHYSICIAN FINED.

Dr. Alfred M. Keighly was fined $250 at Newtown, Australia, March 6, for the alleged representation that he was a legally qualified practitioner. He has given notice of appeal. He asserts that he is a graduate of the Cincinnati College of Medicine and further studied in Europe. It was said that he had been refused registration by the Australian medical board.—Jour. A. M. A.

QUACK SPECIALIST FINED.

A person practicing medicine in New York city has been fined for illegal practice. He claimed to be a specialist in diseases of men. Although he had no license to practice in the State it is estimated that his income was upward of $20,000 per annum, while the pharmacist, a one-time base ball player, to whom his prescriptions were sent and who had no license to practice pharmacy, derived an income equal to that of the so-called specialist. The fine was $50, a small deterrent when $20,000 is at stake.—Exchange.

CHRISTIAN SCIENTIST TO BE TRIED AGAIN.

County Judge Platt, at White Plains, N. Y., has signed an order for a new trial for Luther Pierson, a Christian Scientist who was convicted of being responsible for the death of his child in 1901 from pneumonia without proper medical treatment. The Appellate Division reversed the decision of the lower court, which had convicted Pierson.—Medical News.

AN IOWA ITINERANT PAYS FINE.

The itinerant physician, P. B. Rea, who was indicted last year for practicing medicine in Iowa without a license, fined $300 and costs, and who gave notice of appeal to the Supreme Court, has paid the fine and costs.

DOCTOR SUES FOR $10,000 FEE.

Dr. C. C. Rinehart, of Pittsburg, has entered suit against W. C. Jutte to recover $10,000 for medical services. It was necessary for the defendant to give up his business and he determined to go to Europe. At Mr. Jutte's request, the physician says, he accompanied him abroad, rendering him necessary and continuous service from July 8 to September 26, 1902.

AMPUTATION WITHOUT CONSENT.

A man sued the city of Dresden for damages because his leg had been amputated without his consent in the public hospital. He claimed $6000 or a yearly pension of $300; "pain money" $50, and "mutilation money" $1200. The court awarded him $175.

HOSPITAL WINS SUIT.

The suit against the Maryland University Hospital for $30,000 damages for alleged breach of contract for treatment of a patient was decided in favor of the hospital authorities. The patient was scalded by a hot-water bag. Testimony showed that the regents of the university, against whom the suit had been brought, had nothing to do with the hospital, it being the property of the medical faculty.—Jour. A. M. A., June 6, 1903.

PAYMENT OF INSURANCE POLICY ON CHRISTIAN SCIENTIST REJECTED.

The Supreme Court of Foresters have rejected the claim of the widow of Richard A. Robb, for $1000. The proofs accompanying the claim showed that the deceased had been seriously ill for two weeks, but being a believer in Christian Science, a physician was not called until the day before his death. The claim has been rejected under the section of their Constitution which withdraws the benefits of insurance from any who neglect to procure or refuse to receive medical aid.

SUES THE HOSPITAL.

Attorney John McPhee, of Bluffton, filed a rather sensational suit for $5,000 damages in the Superior Court late yesterday afternoon. The suit is on behalf of Anna McDonald vs. the management of St. Joseph's Hospital at Fort Wayne, Ind. Anna McDonald alleges that she was taken to the hospital January 21 last to be operated on for some slight trouble. She was put under the effects of anaesthetics and after the operation and before she regained consciousness, she alleges that she was moved from the operating room to a cot and that jugs filled with boiling water were placed at her feet. The allegation is that the feet were burned and blistered. The flesh dropped from the sole of the left foot until the bones were exposed. The allegation is now also made that in all probability the left foot will have to be amputated, and that she wants to recover $5,000 damages. Under the law, the bishop of Fort Wayne is made defendant to the suit.

TECHNICALITIES UNDER WHICH ACCIDENT COMPANIES ATTEMPT TO ESCAPE LIABILITY.

That a man who cuts a corn on his foot unnecessarily exposes himself to danger, is the statement made by the Travelers' Insurance Company of Hartford, Conn., which last Thursday filed an affidavit of defense in the United States Circuit Court in this city (Philadelphia) denying its liability for a $5000 accident policy on the life of Leonard Nax, the pipe manufacturer, who died at his home, 1515 Diamond street, June 22 last, presumably of blood poisoning. Katharine Nax, the widow, is the plaintiff, and she avers that her husband's death was due to an accidental cut received while he was paring a corn on his right foot.—The United States Review, May 28, 1903.

DEATH FROM EATING UNSOUND OYSTERS.

Unsound oysters produced the death of a man carrying an accident insurance policy by passing out of the large part of the stomach, lodging in the lower part of the stomach or upper intestine, inflaming the intestinal tract and mucous membrane, causing the same to enlarge, locking the bowels, obstructing and preventing passage, and thereby producing death. The company claimed that the policy exempted it from liability for "injuries, fatal or otherwise, resulting from poison or anything accidentally or otherwise taken, administered, absorbed or inhaled," and that the act of the insured in eating the oysters fell within the terms of said provision; that he ate them voluntarily, consciously and intentionally; therefore, they were not "accidentally" taken. But the Court of Civil Appeals of Texas holds against the company. It says, Maryland Casualty Company vs. Hudgins, that it was true the insured knowingly ate the oysters, but he did not know that he was eating unsound oysters. The effect was not the natural and probable consequence of eating sound oysters, and the effect produced by the eating of the unsound oysters could not have been reasonably anticipated or foreseen by him. It was unexpected, unforeseen and unusual, and, therefore, it could not be said that he voluntarily ate the unsound oysters. This being

true, his death was caused by "accidental means," as that term was used in the policy. Furthermore, if it should be conceded that the court's position on this proposition was not sound, which it does not do, it says that it is still of the opinion that the word "anything" as used in the language "poison or anything accidentally or otherwise taken, admisintered, absorbed, or inhaled," did not refer to eating of food ordinarily harmless, not knowing it to be unsound and dangerous in that condition. It must be interpreted as having reference to those agencies which are not strictly denominated poison, but which have some elements of poison, and which may produce death if properly taken.—Jour. A. M. A., May 16, 1903.

MIXED THE BABIES IN AN INCUBATOR.

It is stated by an exchange that suit has been brought in the courts of Amsterdam by a father who claims that in February last year a newly born child was taken from the mother's care to be reared in an incubator. In accordance with medical advice the infant was packed in a wadding and hurried to the hospital, where the incubators stand ready to receive weakly babies. Meanwhile, in compliance with Dutch law, the father had the birth of a son registered, and the child was given the name of Franciscus Gerardus there and then. At the hospital a receipt was taken for the baby boy and he was put into one of the incubators. Some weeks passed and the parents received notice that their child was well enough to be taken away. Imagine the father's surprise when he went to fetch his son to have a baby girl thrust into his arms! The hospital nurse declared that some mistake had been made by the parents. The parents nurse and other witnesses declared the mistake was on the part of the hospital authorities. The baby girl was not wanted by the parents of the missing baby boy and nobody else owned her. The father took proceedings against the mayor of the city, who is the nominal head of the hospital, and claimed 240 pounds damages for his lost son. During the time the child was in the incubator the outside of the machine was painted, and according to the plaintiff's advocate, the cards on which were written the particulars regarding the inmates were mixed up. A touch of romance is added to the case by the offer of an anonymous lady, who undertakes to pay the compensation claimed by the parents and adopt the girl who ought to be a boy.—Exchange.

Legislation.

INCREASED LIMIT FOR DAMAGES.

Recent legislation in the State of Illinois increased the limit of damages collectable for death by accident or wrongful act from five to ten thousand dollars.

MEDICAL LEGISLATION IN SOUTH DAKOTA.

During the last session of the legislature a Medical Practice act was passed creating a board of medical examiners for South Dakota. Of the members of this board, who are appointed by the governor, not more than four shall be regular, not more than two homoepathic, and not more than one eclectic. Five members of the board constitute a quorum. Under the law the board must hold two regular meetings each year, on the second Wednesday of July and the second Wednesday of January, respectively, besids additional meetings as the board may deem necessary. All applicants for registration are required to be graduates of colleges having a four years' course of not less than twenty-six weeks each. The board is also empowered to issue licenses to licensees of other States whose requirements are on a par with the State of South Dakota. Dentists, osteopaths "in the legitimate practice of their profession," and "Christian Scientists as such, who do not practice medicine, surgery or obstetrics by the use of any material remedies or agencies," and resident physicians, regularly licensed and practicing at the time of the act are exempted from its operation.

AMENDMENT TO THE CANADIAN MEDICAL PRACTICE ACT.

An amendment which was recently introduced into the New Brunswick Legislature provides that "No duly registered practitioner in that province shall be liable to any action for negligence or malpractice by reason of professional services, unless such action is commenced within one year from the date when the matter complained of in such professional services, terminated."

NEW YORK LAW FOR REGISTRATION OF NURSES.

....**Who May Practice As Registered Nurses.**—Any resident of the State of New York, being over the age of 21 years and of good moral character holding a diploma from a training-school for nurses connected with a hospital or sanitarium giving a course of at least two years, and registered by the regents of the University of the State of New York as maintaining in this and other respects proper standards, all of which shall be determined by the said regents, and who shall have received from the said regents a certificate of his or her qualifications to practice as a registered nurse, shall be styled and known as a registered nurse, and no other person shall assume such title or use the abbreviation R. N. or any other words, letters or figures to indicate that the person using the name is such a registered nurse. Before beginning to practice nursing every such registered nurse shall cause such certificate to be recorded in the County Clerk's office of the county of his or her residence with an affidavit of his or her identity as the person to whom the same was so issued and of his or her place of residence within such county. In the month of January, 1906, and in every thirty-sixth month thereafter, every registered nurse shall again cause his or her certificate to be recorded in the said County Clerk's office, with an affidavit of his or her identity as the person to whom the same was issued, and of his or her place of residence at the time of such registration. Nothing contained in this act shall be considered as conferring any authority to practice medicine or to undertake the treatment or cure of disease in violation of article eight of this chapter.

Board of Examiners; Examination; Fees.—Upon the taking effect of this act, the New York State Nurses' Association shall nominate for examiners ten of their members who have had not less than five years' experience in their profession, and at each annual meeting of said association thereafter, two other candidates. The regents of the University of the State of New York shall appoint a board of five examiners from such list. One member of said board shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Upon the expiration of the term of office of any examiner, the said regents shall likewise fill the vacancy for a term of five years and until his or her successor is chosen. An unexpired term of an examiner, caused by death, resignation or otherwise,

shall be filled by the regents in the same manner as an original appointment is made. The said regents, with the advice of the board of examiners above provided for, shall make rules for the examination of nurses applying for certification under this act, and shall charge for examination and for certification a fee of five dollars to meet the actual expenses, and shall report annually their receipts and expenditures under the provisions of this act, to the State Comptroller, and pay the balance of receipts over expenditures to the State Treasurer. The said regents may revoke any such certificate for sufficient cause after written notice to the holder thereof and hearing thereon. No person shall thereafter practice as a registered nurse under any such revoked certificate.

Waiver of Examination.—The regents of the University of the State of New York may, upon the recommendation of said board of examiners, waive the examination of any persons possessing the qualifications mentioned in Section 206,who shall have been graduated before, or who are in training at the time of, the passage of this act and shall hereafter be graduated, and of such persons now engaged in the practice of nursing as have had three years' experience in a general hospital prior to the passage of this act, who shall apply in writing for such certificate within three years after the passage of this act, and shall also grant a certificate to any nurse of good moral character, who has been engaged in the actual practice of nursing for not less than three years prior to the passage of this act who shall satisfactorily pass an examination in practical nursing within three years hereafter.

Violations of This Article.—Any violation of this article shall be a misdemeanor. When any prosecution under this article is made on the complaint of the New York State Nurses' Association, the certificate of incorporation of which was filed and recorded in the office of the Secretary of State on the 2d day of April, 1902, the fines collected shall be paid to said association, and any excess in the amount of fines so paid over the expenses incurred by said association in enforcing the provisions of this article shall be paid at the end of each year to the treasurer of the State of New York.

MEDICAL REGISTRATION IN CANADA.

At a meeting of the Montreal Medical Society held on March 31st, the Roddick bill providing for a change in the methods of registration in medicine was discussed at some length. The

report of the committee to which this subject has been referred was submitted to the chairman, Dr. Lesage. This report stated that there were two means of obtaining a license to practice in the different provinces, one of these being provincial legislation and the other federal legislation. By the former, desired results can be obtained in accepting the following principles: (1) A provincial license alone gives the right to a licensed student to practice medicine. (2) The College of Physicians and Surgeons is alone authorized to deliver the provincial license. (3) All students holding a diploma are held to pass a new examination before obtaining a license. (4) The College of Physicians and Surgeons is authorized to appoint a bureau of provincial examiners, composed of professors attached to the different universities, and of those not affiliated to the faculties or to the medical school. (5) This examining bureau will assume charge of written and oral examinations, at least once a year, of all those graduates who may desire a provincial license.

The report then proceeds to say that in the event of failure to obtain provincial legislation, federal legislation may be obtained in Dr. Roddick's bill as amended by the committee. "We submit, however," says the document, "that the bill is neither desirable nor possible in its present form. We submit, however, that the Roddick bill, as here amended, will meet with the desired results and safeguard the general and special interests of the province in matters pertaining to superior and secondary education." The following are the amendments suggested: (1) The province will name a certain number of representatives, selected either amongst the doctors, the members of the College of Physicians, or from the duly recognized universities. (2) These members, to the number of forty, more or less, will constitute a federal board, which will have power to order an examination and to deliver a federal license, which will be recognized by each of the provinces, on payment by the candidate of the provincial local license. (3) Only those will be admitted to pass their examinations who are licensed doctors in one of the provinces of the Dominion, or a licentiate of a foreign university, duly recognized by the laws of their respective countries. (4) The medical students, duly inscribed by virtue of provincial laws at the moment the law comes into force, cannot be questioned upon other matters than those taught them in the schools or universities prior to this law.—New York Medical Journal.

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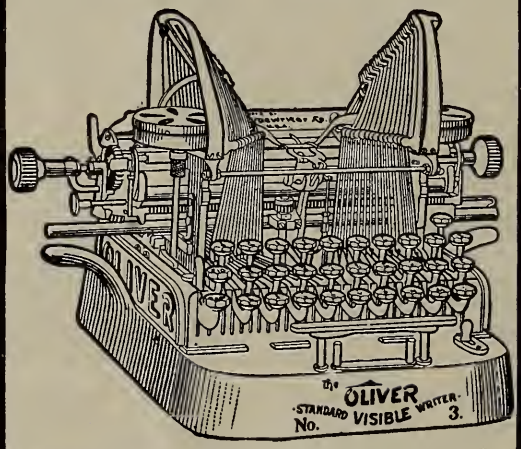

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JULY 1903

MEDICO-LEGAL BULLETIN.

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Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__.

A. P. Buchman.
President.

_____
Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

Measure of Damages in Malpractice.

The investigation of legal subjects generally leads into three great heads of inquiry—the rights of the people, the forms of proceeding and the mode of relief or redress. We will treat of the latter only. The object of law is the creation and preservaiton of legal rights, and whenever it creates a right it provides also some means or remedy by which that right can be protected and enforced. When that legal right is violated the law presumes injury therefrom and gives a remedy therefor. It is this remedy with which we shall deal.

The remedy which the law affords is one of two classes—preventive of violation and redress for violation. The preventive remedy is the injunction granted by the court of equity, and the remedy for redress is the award by the jury of damages in a certain amount of money as compensation for the violation of the right.

The origin of our pecuniary compensation was from the Anglo-Saxons. The first evidence of the system was found in the laws of Ethelbert, king of Kent, in the Sixth century. This code was known as Leges AEthelbirhti, and it was full of arbitrary rules of damages for various things, and the were, or weregild—literally, a man's money—as these damages were called, is the earliest award of damages to be found. In Homer's Iliad he illustrates, in the description of the shield of Achilles, two disputants represented as wrangling before the judge for the weregild, or price of blood, as a composition for murder. The

barbarians were so violent in their passion for revenge that they had no control of it and the arm of valor always prevailed. Civilization working upon them gradually blunted this feeling of resentment and laws finally became recognized.

The were was assessed in money, but, until the advent of metallic currency, the legal fines and penalties were paid in kind, such as cattle. An intermediate stage occurred in the laws of the Continental Saxons. Their weres were fixed in solidi, or shillings. "But the solidus was an imaginary denomination, and instead of counting down the coin, the offending party might drive his legal tender into the farm of the plaintiff. An ox passing sixteen months old represented the greater solidus; the lesser solidus was a yearling ox, or a ewe and her lamb." Some tribes reckoned it in corn, wheat and oats.

These arbitrary rules of Ethelbert (as, a certain amount for fracturing the chin bone; a certain amount for cutting off a piece of the ear) were modified more and more as time went on, though the same classification of wrongs and remedies does not again occur except in those of Alfred, in the Ninth century. Alfred's rates were higher that Ethelbert's, due, perhaps, to a better appreciation of personal rights, though it may be due to the increase and consequent depreciation of the currency. By the laws of William the Conqueror the weres became very few. This is evidence of a civilization gradually increasing and a jurisprudence slowly improving, for "arbitrary rules which do not bend to the justice of the particular matter, especially when used to fix values, are always a misfortune and a defect in jurisprudence." The were, however, corresponds somewhat to our damages recovered in a civil action for damages for assault and personal injury.

After centuries of development we come finally to the trial of civil cases by a jury, and the disposing of questions of fact and the assessing of damages by it. The jury, as we know it now, was known at a very early period of the English law—about the time of Henry II., though the limits of its power over the amount of remuneration were not at first as clearly defined as they have since become. Now in all cases of civil injury the declared object of the law is to give compensation to the party injured for the actual loss sustained, and if the act was oppressive or grossly negligent, the jury may award exemplary damages by way of punishment. The amount of this compensation is awarded according to established rules, and these rules constitute what is called the Measure of Damages, with which we are concerned.

Damages are given an extensive classification. They are

nominal—a trivial amount given in recognition of a right violated—or substantial, which are awarded as compensation for the injury. They are present—those given for a loss already sustained, or prospective—those awarded for a loss which will accrue in the future from a wrongful act already committed. They are exemplary—those given to punish the wrong-doer, or compensatory—those given to compensate the party for the injury he has suffered. There are other classes not necessary to mention here; but they all go to show the breadth and scope of the subject of damages. These various classes indicate certain rules which must be followed in every action, depending upon the kind of damages claimed.

Legal relief is not to be had for every kind of loss that individuals sustain by the acts of others. There are many sufferings inflicted by human agency where the immediate instruments of the injury are free from fault, or the act beyond their control. In these cases the law does not seek to interfere. It is only legal injury that sets the machinery of the law into operation, and then only when loss is coupled with that legal injury.

Compensation in damages is the redress which the law gives. Its judicial interpretation is a very restricted one, however. Injury resulting from the acts or omissions of others, free from taint or fraud, malice or wilful wrong, consists (1) in the actual pecuniary loss directly sustained; (2) the indirect pecuniary loss sustained in consequence of the primary loss; (3) mental suffering; (4) value of time consumed in establishing the contested right; (5) actual expenses incurred in the same. This is a general statement of the elements of compensation. It is limited to certain items depending upon the subject matter of the controversy. In all cases growing out of the non-performance of contracts, and in those of infringement of rights, or non-performance of duties, created or imposed by law, in which there is no element of fraud, wilful negligence or malice, the compensation recovered in damages consists solely of the direct pecuniary loss, which includes, in mere money demands, interest for the detention of the amount claimed, and the costs of the suit brought for the recovery of the demand. No indirect loss is accounted for. No allowance is made for mental suffering of the party, nor the time actually consumed and the fees actually paid to counsel for the establishment of the demand in controversy. If fraud, malice or wilful negligence enter into the case, the compensation awarded takes on a new element—that of vindictive, or punitory, or exemplary damages, which not only recompenses the injured party, but punishes the defendant as an example for the protection of society.

With the single exception of this award for punishment or example, compensation is always in theory the guiding principle in measuring damages both for breaches of contract and for wrongs, although, "owing to the imperfection of human laws and tribunals, as well as to the general inadequacy of a pecuniary standard," actual compensation precisely commensurate with the injury is in practice seldom, perhaps never, obtained. The renumeration in cases of breach of contract must be less than the injury sustained; in cases of tort it may be more.

Civil malpractice, with regard to the medical profession, as the words imply, is bad practice or bad professional treatment of disease, injury or other ailment of a patient through ignorance, carelessness or lack of skill. The action is one of damages for that bad practice or treatment. It may be a suit on contract, or in tort for the injury sustained, and the rules applicable to other cases of contract or tort are applicable here. There must, first of all, be a wrongful act done by defendant, loss resulting directly therefrom and not as a remote consequence thereof, and the plaintiff must make ample proof of both—that is, the plaintiff must show that defendant was failing in the requirements of skill and care and intelligence, either in the possession of them or in their exercise, or both, and that as a direct and natural result of that failure he was injured, or sustained loss. The law impliedly requires the physician or surgeon to possess and exercise reasonable skill, care and diligence, and presumes that he has, in every case, performd his duty. So that the burden is on the plaintiff to show that the practitioner has failed in that duty to his damage.

The malpractice action is rarely brought on contract, but is almost entirely brought in tort, with negligence and unskillfulness as the elements of complaint. If the suit should be brought for breach of contract of employment, the general rule is that plaintiff may recover for such losses as may fairly be considered as ordinarily arising from the breach of the contract, or such as may reasonably be supposed to have been in contemplation of the parties at the time they made the contract as the natural result of the breach, and which are neither uncertain in their nature nor remote as to their cause. If the suit should be in tort, defendant is liable for the direct and natural consequences of his wrongful act, whether or no it was in contemplation at the time of the act. In other words, in breach of contract we look forward in the future toward the loss and determine whether the party breaking the contract had or ought to have had the particular damage in contemplation as a result of a breach; while in tort we stand at the time the loss occurs and look backward

at the cause, and if there is an unbroken sequence between the two, defendant is liable whether he had the loss in contemplation or not.

Compensation cannot be based on mere conjectural probabilities of loss. It must be certain both in nature and respect to the cause from which it proceeds. Absolute certainty is not required, but there must be "such certainty as satisfies the mind of a prudent and impartial person." If it cannot be shown with reasonable certainty that the damage suffered by the plaintiff resulted from the defendant's act, plaintiff does not lift the burden and he has no basis for recovery of damages. When once the plaintiff satisfies the requirements as to showing probable negligence, carelessness and unskillfulness on the part of the physician or surgeon, and the apparent certainty of damage resulting therefrom, the jury is the forum from which damages must come. It is left to them to say whether or not the physician was negligent or unskillful and whether injury resulted, and what the loss to be compensated is. In some cases of contract the parties themselves fix the measure of compensation, but in others there is afforded no standard of measurement, and it is impossible to prescribe any general rule which will in all cases give to a plaintiff an equivalent for what he would have enjoyed if the contract had not been violated. In the case of torts there are frequently elements involved so wholly unsusceptible of money valuation that the measure of recovery must be left largely, if not entirely, to the discretion of the jury. They must determine from their own sense of justice and their knowledge of human nature what the amount should be. This, of course, is many times an unfortunate situation to be placed in, for the American jury is a very uncertain quantity. Their sense of justice is oftentimes a mere whim, to be pulled one way or the other by sympathy or the words of a skillful attorney. But it is the best method we have.

The malpractice action is one primarily for loss of negligence and unskillfulness. It is thus to be classed with those actions for negligence in which the defendant owes some duty to the plaintiff, the violation of which causes injury. Negligence is the failure to exercise due care with reference to the circumstances, and the elements which go to make up the measure of damages for actions of negligence will apply to the malpractice action. In every case of damages for personal injury, in which malpractice is included, plaintiff can recover for certain things only—certain taxable fees, namely, expenses to which plaintiff has been reasonably subjected and actually incurred; physical inconvenience and suffering naturally resulting, and loss of earn-

ing power—what his services are reasonably worth, shown by what he was earning before the injury occurred. Mental suffering alone may be made the basis of damages when there is actually a physicial injury, but the tendency of the law is against the recovery for mental suffering, because it opens up too wide a door for uncertain damages. In California recovery is allowed for mental suffering if it results in actual bodily injury, caused by fright. Mere anxiety is nowhere recognized as a foundation for the recovery of damages.

Permanent disability, if strictly proved, is ground for the recovery of damages in the malpractice action. In this respect, also, this action is like all other personal injury cases, in that all damages for the injury, past, present and future, or prospective, must be recovered in the one action. Plaintiff cannot recover damages for loss of time, expenses to the time of the trial and date of judgment, and for disability, and subsequently sue again for further loss of time, expenses incurred and disability created by the injury. The one action must suffice for the whole.

If the physician was so grossly negligent that he was practically wilfully careless or unskillful in his acts, the plaintiff, in most cases, can have exemplary or vindictive damages in addition. These damages can be recovered in all states except Massachusetts, Michigan, New Hampshire, Nebraska and Washington, with some doubt as to Colorado.

If it is impossible to distinguish between consequences of lack of skill, care and diligence and those of the malady which defendant essayed to treat, only nominal damages can be recovered. This is in recognition of his right merely, and usually carries the cost of the suit with it.

Plaintiff can also recover his costs in the suit. This means only court costs, such as fees for filing papers, sheriff and witness fees and similar expenses. It does not include attorney's fees, nor fees paid to experts. The recovery of costs is purely a statutory right and unless the statute of the particular state allows the recovery of these costs, plaintiff will have to pay those incurred in the case.

Plaintiff cannot ordinarily recover any interest in a personal injury case of this kind, for there is no detention of anything owing him by the defendant. After judgment is entered by the court upon the verdict rendered, there is a judgment debt upon which interest can be collected by statute in most of the states. In the majority of the states there is a statute which exempts a certain amount of property from attachment for a contract debt. This statute, however, applies only to contract indebtedness. A judgment for a tort, no matter if it is based on con-

tract, as is the case with malpractice, can be collected of anything belonging to defendant. In some jurisdictions the physician's fees for services to other patients can be attached to satisfy the judgment.

Certain elements also enter into the malpractice action to mitigate or defeat the claim of the plaintiff for damages. If the plaintiff shows that defendant was negligent and unskillful, and defendant shows that plaintiff refused to let him make the injury good, or failed to call in another physician to treat him or to take other steps necessary to prevent the aggravation of the injury, such aggravation does not destroy the right to compensation for the original injury, but it mitigates or reduces the amount of that compensation. If the defendant shows that plaintiff himself was negligent, so that the injury alleged can be said to be caused by his own negligence, then his action is defeated and no damage is shown for which the physician is liable. This is contributory negligence, which in most jurisdictions bars any recovery for damages.

Where death results from negligence and lack of skill, there is not much difference in the elements of the measure of damages. Here if the patient is a minor child and the suit is by a parent to recover damages, the only element entering is that of the net value of the child's services over and above the cost of his or her maintenance. If the husband is bringing the action for damages for the death of the wife, the only element entering is that of loss of her companionship and services. This has a pecuniary value, which is not measureable by any standard, but is left to the judgment of the jury.

An executor or administrator can bring the action for the benefit of the estate, but there must be next of kin. In a recent case of malpractice brought in Maine by the administratrix of an estate for damages for negligence and unskillfulness in failing to diagnose a malady as diphtheria, resulting in death, the Supreme court held that only such damages could be allowed as the deceased sustained in his life time. Nothing could be allowed for his loss of life, nor for what he might have earned had he lived longer. The administratrix is entitled to recover for the benefit of the estate such damages as the deceased suffered up to the last moment of his life, and no longer. This would include loss of earning, expenses to which he was put by reason of the negligence of the defendant and mental and bodily suffering up to the moment of death.

The measure of damages for the malpractice action is thus seen to be a matter of law to be decided by the court. The court

instructs the jury what the measure is in legal terms, and they decide the fact and determine the amount.

Occasionally the law fails to prescribe a precise measure of some of the damages, but confines itself to principles; yet it always determines whether and how far the extent of the compensation is to be left to the jury's discretion. The importance of fixed rules is thus apparent. The compensation obtained by the process of litigation is partial and irregular, from the "imperfect nature of all human administration," and the impossibility to do more than approach correct results. Tribunals able to carry the inquiry beyond the reach of our investigation, to scan the motive of each act, to determine how much is due to malice, how much to neglect and how much to honest incapacity, would be alone fit to make complete compensation in each particular instance. This is hardly to be expected in our day, though it is the ideal.

PACIFIC COAST PHYSICIANS ORGANIZE.

Members of the medical profession in California have organized the Physicians' Mutual Aid Association of the Pacific Slope, for the purpose of mutual protection and relief of members, their widows and children. The association is incorporated without capital stock and has a board of directors composed of well known Pasadena physicians.

POSTOFFICE PHYSICIANS DISMISSED.

An order abolishing the position of physician from postoffices was issued by Postmaster General Payne, which took effect at the close of business June 30, 1903. This order removes a number of physicians whose employment was not specifically authorized by law, and is probably one of the results of the Postal Department investigation. The cities affected are New York, Chicago, Brooklyn, Philadelphia and Boston.

PATENT MEDICINE SLOT MACHINES.

A recent innovation in Paris, France, which is being vigorously protested against by the medical profession, contemplates the dispensing of medicine by slot machines. The profession oppose the machines on account of the danger of wrong drugs being dispensed.

THE EMERGENCY PROTECTIVE COMPANY.

There was incorporated at Albany, N. Y., June 20th, the Emergency Protective Company, with a capital of $200,000, principal headquarters to be located in Manhattan. The organization proposes to contract to furnish its policy-holders with physicians, medical attendance, drugs, supplies, hospital service and undertakers. This is an organization that should not receive the support of the medical profession. Their active opposition may be the means of preventing in this country those deplorable conditions which exist in Germany—that is, the contract doctor.

LAW TO PROTECT PROFESSIONAL CONFIDENCES.

The Springfield Republican says: "The Massachusetts Medical Society is moving to secure legislation for the protection of the confidential relations between patient and physician. The lawyer and clergyman now have the protection of the law for their professional secrets against the questions of examining counsel, and the argument is that the consultation and confidential conference between the doctor and the patient, which the law does not protect, should be held equally sacred in the courts. When called into court as witnesses the respect in which confidences given to the two other profesisonal men are held falls away from the doctor. He can be forced to reveal that which has been given him under pledge of secrecy, and this is revolting to his sense of honor. Hence the protest and appeal which comes from the State Medical Society."

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I JULY 1903 No. 10

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

$1.00 Per Annum SUBSCRIPTION RATES **Single Copies 15c**

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HYGIENIC HOUSE CLEANING.

The hygenic housewife—and every good housekeeper is a practical sanitarian—will welcome the new process of "cleaning by vacuum," described in a recent issue of the London Lancet (Feb. 14, 1903). Instead of the old-fashioned, dust-raising broom and the dust-scattering feather duster, or the more modern compressed air method—by neither of which are dust and dirt finally disposed of, but only dislodged from their settling places to be scattered to others—all dust, and the disease germs which it contains, is "sucked" out of carpets, rugs, curtains, tapestries, etc., and conveyed through rubber tubes to an exhaust cylinder, whence it is emptied into the furnace for complete destruction.

As described by the Lancet, the process is simple enough, and indeed such that it is a little surprising that it has not been suggested and applied before. When "spring cleaning" is to be done a machine is sent to the house, provided with a pair of vacuum pumps, operated by an oil or electric motor, which serve to maintain an "exhaust" of several pounds to the square inch. Varying lengths of hose are connected with this "exhaust" and

terminate in so-called "cleaners" or "renovators," which consist of tubes flattened out at the end into a long slit. The "renovator" is rubbed up and down over the carpet or cloth coverings of chairs or seats, from which it rapidly sucks out all the dust. "The result is quite remarkable." The dust is extracted not only from the surface, but from the body of the carpet also, so that at the end of the process not the slightest appearance of dirt can be detected on beating the material.

Carpets need not be taken up and need not be sent away, nor curtains, furniture or bedding, and the whole operation of a ten-room house need not occupy more than eight hours, the time taken depending upon the amount of dirt it is possible to remove and upon the nature of the furniture. It is as remarkable as it is important from a sanitary point of view that during this process dust or dirt is not raised in the room, for exhaustion is proceeding the whole time; the air of the room is constantly being changed, and it is found when the cleaning process is over that the shelves, the mantlepiece, or the cover of the piano is free from all signs of deposited dust. In a similar way the dust may be removed from the walls by means of a special cleaner, which consists of a brush of horseshoe shape, provided with an exhaust tube in the center.

It is not, however, in the amelioration of the discomforts of the spring cleaning that this new method finds greatest favor in the mind of the sanitary official. Its use in the sick room, especially in the contagious diseases, must prove of vastly greater importance. Consumption, pneumonia, influenza, scarlet fever and similar diseases are known to be spread by the infected dust of the sick room, and columns have been written urging that in the cleaning of living rooms, whether occupied by the sick or the well—but much more so by the sick—the distinct and recognized purpose of the operation shall be to remove and not simply to stir up the ever-gathering dust. For years this has been recognized as an essential feature of all efforts toward the restriction of consumption, and the department is glad to know that through its efforts steps are already being taken to introduce the method of "cleaning by vacuum" into Chicago.—Bulletin Chicago Board of Health.

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

THE LIMITATION TO THE POWERS OF HEALTH BOARDS.

A recent decision of the Appellate court (New York state) is of interest. In the case of the village of Liberty vs. E. Van Fredenburg, the defendant was in the habit of collecting refuse from hotels and other resorts near Liberty, and among other places from the Loomis Sanitarium for Consumptives, which refuse he used for feeding hogs with. The board of health of Liberty issued an order forbidding him to use the refuse from the sanitarium, for disobedience of which order he was arrested, held for trial, convicted and sentenced in the county court. An appeal was entered, and the Appellate court reversed the decision, pointing out that the powers of the health boards are not unlimited, and that they must not overstep their legal limits or they cannot enforce their orders. The court says: "The gist of the crime which the defendant is said to have committed is the disobedience of a lawful order of the board of health. Unless, then, the order disobeyed was one lawfully made by the board of health, defendant had been guilty of no crime. There is no proof that this refuse from the sanitarium for consumptives is any more dangerous than the refuse from any hotel, and we cannot assume such to be the fact in sustaining this conviction."—Exchange.

CANCELLED HIS CERTIFICATE.

The Supreme court at Topeka, Kan., has sustained the action of the State Board of Medical Examination and Registra-

tion in cancelling a certificate to practice medicine which was held by Dr. W. M. Meffert, of Emporia. The court holds that the cancellation of the certificate was more in the nature of protection of the public against Meffert than as a punishment to him because of the immoral actions with which he was charged before the board. It is held that the board was right in refusing to permit a man to hold a certificate of authority that will allow him to continue to practice medicine; to be in a position where he can enter the home of the sick and distressed.

ANTI-VACCINATION LAW IN MINNESOTA.

At the last meeting of the Legislature, a new law was put upon the statute books of Minnesota, regarding compulsory vaccination. As introduced, the law did away with compulsory vaccination altogether, but the doctors in the law-making body succeeded in amending it and adding the "except" proviso, so that it was shorn of its most radical features before its passage. The law is as follows:

An Act to prevent compulsory vaccination and to prevent vaccination being made a condition precedent to the school attendance.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. There hereafter it shall be unlawful for any Board of Health, Board of Education or any other public board or officer, acting in this state under police regulations or otherwise, or under any general law or city charter however adopted, to compel or require, by resolution, order, ordinance or procedure of any kind, the vaccination of any child, or to make vaccination a condition precedent to the attendance at any school in the state of Minnesota, or to exclude any child or other person from attendance on any school in this state on account of the fact that such child or other person shall not have been vaccinated. Except in such cases of epidemic of smallpox such Boards of Health and Boards of Education may, by joint action, require such vaccination by a duly licensed and practicing physician, to be selected by the person to be vaccinated; provided, that any child may be exempted from the provisions of this act where a reputable physician certifies in writing that on account of said child's physical condition such vaccination would be dangerous to the health of said child.

Section 2. This act shall take effect and be in force from and after its passage.

Approved April 20, 1903.—Exchange.

MARRIED WOMAN'S LIABILITY.

A judgment recovered by Herbert Hazard, on an assigned account of Drs. Emery M. Wadsworth and Stuart H. Benton, against Mrs. Caroline Potts, for medical services rendered her husband, has been reversed by the Appellate court. The court holds that under the laws of New York state a married woman is not liable for medical attendance rendered to her husband and his family, unless in the first instance she pledged her personal credit to the attending physician.

THE CONSTITUTIONALITY OF THE MASSACHUSETTS VACCINATION LAW TO BE TESTED.

The question of the constitutionality of the compulsory vaccination law will be tested in Washington, D. C., when the case of Heming Jacobson, of Cambridge, Mass., versus the Commonwealth of Massachusetts docketed in the United States Supreme Court on June 30th, comes up for trial.

VACCINATION BY-LAW ILLEGAL.

The city of Montreal, Canada, recently brought an action against a life insurance company for allowing an employe to frequent the office without a certificate of vaccination. A judgment was rendered by Recorder Weir in favor of the defendants, which holds that the vaccination by-law is illegal in so far as it tends to prevent an employer from allowing his employes to enter any office or factory without holding a certificate of vaccination.

NEW YORK PHYSICIANS ARRESTED FOR MISAPPROPRIATION OF ANTI-TOXIN.

The district attorney's office in New York City is bringing action against some sixty physicians in that city, alleging that they had been obtaining diphtheria anti-toxin from the city on the plea that it was to be used on individuals too poor to pay for the remedy, and had sold the same to their patients. Some dozen or more have been arraigned and are held under $500 bail each. The information was furnished to the mayor in December last relative to the wholesale misappropriation, and an investigation was at once ordered, with the above result.

PARIS PHYSICIAN CONVICTED OF LARCENY.

According to the "Journal de Medicine" of Paris, an action has been pending in the courts for two years against a physician for larceny, and a decision has been rendered convicting the defendant and imposing a penalty of six months' imprisonment. The defendant confessed to having stolen from a large department store statuettes, cosmetics and an umbrella. These were pawned in order to secure wherewith to purchase food.

PHYSICIAN WINS SUIT AGAINST COLLEGE.

The University of Tennesse was recently sued by Dr. James G. Crawford for $750.00, the same being paid by the professorship. The court, in rendering the decision in the doctor's favor, held that he had performed his duty and that the faculty were wrong in refusing to pay him and in declining to arbitrate.

COURT ALLOW'S PHYSICIAN'S FEES.

Dr. Walter C. Browning brought suit for $350,000 for professional services against the estate of the late Senator C. L. Magee. The court recently rendered a decision allowing Dr. Browning $34,163. It sustaind three of the thirty exceptions filed and the previous decision, which had awarded him $29,239.

PHYSICIAN VINDICATED.

In an action for damages alleging malpractice at Anchorage, Ky., against Dr. Cuthbert Thompson, a decision was rendered in the defendant's favor. The action was based upon services rendered twenty-two months before suit commenced to a woman 76 years old, for the reduction of a colles fracture.

A STOMACH WORTH $5,000.

A suit has recently been brought in Milwaukee, Wis., by the husband of a patient for $5,000, alleging that the physician removed her stomach and refused to replace it.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

INDIANA RECIPROCITY LICENSES.

The State Board of Medical Examiners have issued licenses to practice in this state, under the reciprocity agreement with other states, to the following persons: D. T. Odell, Anderson; G. H. Hoffman, Fort Wayne; W. C. Buntin, Indianapolis, and Robert McCormack, of Nappanee, all of whom came from Illinois, and Frank H. Brown, of Fort Wayne, who came here from Michigan. The board passed on the qualifications of the applicants to take the examinations next week. For the first time examinations will be given to osteopaths, of whom three have applied for licenses. The examinations will be the same as others, except that osteopaths will not be required to take the tests in materia medica.

PENNSYLVANIA BOARD.

The Board of Medical Examiners, representing the Medical Society of Pennsylvania, held sessions during June at Industrial Hall, Philadelphia, and at the Central High School building, Pittsburg. There were 247 applicants present at Philadelphia and 145 at Pittsburg. The examiners convened at Haddon Hall, Atlantic City, on July 28th, to compare averages, and applicants will be notified of the results on August 1st.

MARYLAND BOARD.

At the recent examinations of the State Board of Medical Examiners held in Baltimore, Md., 135 persons came up for examination, including second-year students and candidates who had previously failed. Of these seventy-one passed.

IOWA EMBALMERS' VOLUNTARY EXAMINATION.

At the examination of the undertakers for embalmer's license, held at the office of the State Board of Health May 29th, there were seventy-three candidates. These examinations are written and oral as well as demonstrations upon the cadaver. They are conducted by a committee of two members of the State Board of Health and two members of the Iowa Funeral Directors' Association, assisted by the secretary of the State Board of Health and his office force. It is a rigid examination and the preparation required to meet it has been the means of greatly elevating the standard of the mortician. The commendable feature in connection with these examinations is that they are voluntarily taken—the greatest inducement being an ambition to be at the front of their profession. The benefits arising from such proficiency to the public from a sanitary and aesthetic standpoint are incalculable. There are nearly six hundred in Iowa who have been awarded these licenses upon examination.—Iowa Health Bulletin.

CONNECTICUT PHYSICIANS FINED.

Dr. Henry A. Carrington, of Bristol, Conn., was fined $10 for failure in reporting a case of scarlet fever.

Dr. Thomas Mulligan, of New Britain, was fined $1 for failing to report a case of measles and diphtheria.

ILLEGAL PRACTITIONERS FINED.

On May 27th Dr. Wm. W. Phippen, Grand Rapids, Mich., was assessed a fine of $25 and costs for illegal practice of medicine. The charges were preferred by the Kent County Medical Society.

Charles Sampsell, of New York City, was recently arrested on the charge of practicing medicine without a license, under the name of "Dr. E. D. Porter." He was convicted and fined $50.

LARGEST DENTAL CLASS BEFORE PENNSYLVANIA STATE BOARD.

The largest class ever examined at one time by the State Dental Board came before that body June 11, when 186 applicants were examined in the city and seventy-six in Pittsburg. They were nearly all the graduates of the five dental schools in Pennsylvania. One applicant was before the board for the sixth time.

Legislation.

NEW MICHIGAN MEDICAL LAW.

Section 3. On and after the date of the passage of this act, all men and women who wish to begin the practice of medicine and surgery in any of its branches in this state, shall make application to the State Board of Registration in Medicine, to be registered and for a certificate of registration. This registration and certificate shall be granted to such applicants as shall give satisfactory proofs of being 21 years of age and of good moral character, but only on compliance with at least one of the following conditions contained in sub-divisions one, two and three of this section:

First. The applicant shall be registered and given a certificate of registration if he shall satisfactorily pass an examination before the board on the following subjects: Anatomy, physiology, chemsitry, pathology, materia medica and therapeutics, toxicology, histology, practice of medicine, surgery, obstetrics, gynecology, mental and nervous diseases, diseases of the eye, ear, nose and throat, bacteriology, hygiene, public health laws of Michigan and medical jurisprudence; said examination to be conducted as follows:

(a) The applicant shall pay a fee of $25.00 prior to examination. Provided, that the examination fee for graduates of any medical school in the state of Michigan, approved by said board, shall be the sum of $10.00.

(b) The examination shall be in writing, oral, or both.

(c) The questions on all subjects, except in materia medica and therapeutics and practice of medicine, shall be such as may be answered alike by all schools of medicine.

(d) The applicant shall, if possible, be examined in materia medica and therapeutics and practice of medicine by those members of the board, or by a qualified member appointed by the board, belonging to the same school as the applicant, and no ap-

plicant shall be rejected because of his adherence to any particular system of practice.

(e) An average percentage of at least 75 per cent. of correct answers shall be required from every candidate. No additional fee shall be charged by this board for the registration of those who successfully pass such examination. Provided, however, that such applicant for examination shall have a diploma from a legally incorporated, regularly established and reputable college of medicine within the states, territories, districts and provinces of the United States, or within any foreign nation (provided such foreign nation accord a like privilege to graduates of approved medical colleges of this state) having at least a four years' course of seven months in each calendar year, as shall be approved and designated by the board of registration in medicine. Also provided, that such applicant shall have, previous to the beginning of his course in medicine, a diploma from a recognized and reputable high school, academy, college or university, having a classical course, or shall pass an examination equivalent at least to the minimum standard of preliminary education adopted and published by the board before examiners appointed by and in accordance with the regulations of aforesaid board, and at such time and place as the board may designate. Provided, a student entering a college in Michigan having a preliminary examination of a standard approval by the board of registration in medicine shall not be required to take this examination. Provided, that this requirement of preliminary education shall not apply to those students who, on the date of the passage of this act, were regularly registered as students of legally organized and reputable medical colleges approved of by said board. An provided, also, that the requirements of medical education shall not apply to those graduates of legally organized and reputable medical colleges approved of by said board who had graduated from such colleges previous to the date of the passage of this act, and students complying with the other provisions of this section who on January 1st of the present year were regularly registered as students of legally organized and reputable medical colleges of this state, approved of by said board, may obtain a certificate of registration as graduates of such colleges and without examination by the board on payment of a fee of $10.00. The board of registration in medicine shall, from time to time, adopt and publish a minimum standard of medical education, and no medical college shall be approved and designated by said board under this sub-division one, of section three, unless, in the judgment of the board, it conforms with such standard.

Second. The applicant shall be registered and given a certificate of registration if he shall present a certified copy or certificate of registration or license which has been issued to said applicant in any foreign nation where the requirements of registration shall be deemed by said board of registration in medicine to be equivalent to those of this act. Provided, such country shall accord a like privilege to holders of certificates from this board. The fee for registration from applicants of this class shall be $25.00.

Third. The applicant shall be registered and given a certificate of registration if he shall present a certified copy of certificate of registration or license which has been issued to said applicant within the states, territories, districts or provinces of the United States where the requirements for registration shall be deemed by the board of registration in medicine to be equivalent to those of this act, and shall otherwise conform to the rules and regulations agreed on between the state board of which he is a licentiate and said board relative to the recognition and exchange of certificates between states. Provided, such states shall accord a like privilege to holders of certificates from this board. The fee for registration from applicants of this class shall be $25.00.

Fourth. If any person shall unlawfully obtain and procure himself to be registered under this section, either by false and untrue statements contained in his application to the board of registration in medicine, or by presenting to said board a false or untrue diploma or license, or one fraudulently obtained, he shall be deemed guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than $300.00 nor more than $500.00, or imprisonment at hard labor for not less than one year, nor more than three years, or both, at the discretion of the court, and shall forfeit all rights and privileges obtained or conferred on him by virtue of such registration as a physician or surgeon.

Fifth. Any person who shall swear falsely in any affidavit or oral testimony made or given by virtue of the provisions of this act or the regulations of the board of registration in medicine, shall be deemed guilty of perjury and, on conviction thereof, shall be subject to all the pains and penalties of perjury.

Sixth. The board of registration in medicine shall refuse to issue a certificate of registration provided for in this section to any person guilty of grossly unprofessional and dishonest conduct of a character likely to deceive the public, and said board shall, after due notice and hearing, revoke a certificate issued subsequent to the date of the passage of this act, or subsequent

to the date of the passage of Act No. 237, of the Public Acts of 1899, for like cause or for offenses involving moral turpitude, habitual intemperance, the drug habit, or for fraud or perjury in connection with obtaining of a certificate of registration or for a certificate obtained or issued through error, when such offenses shall have been legally established in a court of competent jurisdiction. And, provided further, after the passage of this act, the board may, at its discretion, revoke the certificate of registration, after due notice and hearing, of any registered practitioner who inserts any advertisement in any newspaper, pamphlet, circular, or other written or printed paper, relative to venereal diseases or othr matter of any obscene or offensive nature derogatory to good morals.

Section 7. Any person who shall practice medicine or surgery in this state without first complying with the provisions of this act, or any person who shall violate its provisions (except as heretofore provided in section 3 of this act) shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not more than $100.00, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, for each offense. It shall be the duty of the prosecuting attorneys of the counties of this state to prosecute violations of the provisions of this act.

NEW CALIFORNIA LAW.

Drug peddlers in California must now pay a license. Through the efforts of the California Board of Pharmacy an act has been passed by the Legislature imposing a tax of $200 per year, besides such license as may be imposed by cities and counties. It is hoped that this will make the business of itinerant vendors of drugs, nostrums, ointments and appliances sold for the cure of disease, injuries or deformities unprofitable and in a measure at least remove such undesirable competition from the drug trade. The new law was approved March 26 and took effect May 26, so that it is now in force.

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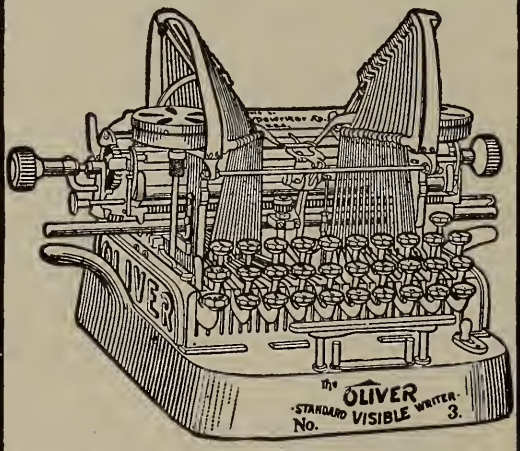

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AUGUST 1903

MEDICO-LEGAL BULLETIN.

Vol. I No. 11

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My full name is.....Office No.....St.

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If connected with a firm, the style is.....

I graduated from the.....in the year.....

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I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs. I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

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hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract, and to pay all the cost and expense of defending such suits not exceeding **FIVE THOUSAND DOLLARS** in defense of any one suit, nor exceeding in the aggregate **TEN THOUSAND DOLLARS** in defense of suits based on services rendered within one year from the date of this contract, or within any one year for which this contract shall be renewed, all in the manner and upon the conditions herein below stated, to-wit:—

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190_

A. P. Buchman.
President.

_____
Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

PRIVILEGED COMMUNICATIONS

The profession is generally familiar with the subject of privileged communications so that it may be of no avail to spend time discussing it; but a short review of the legal aspect of the relation of physician and patient, particularly in reference to the rule of privileged communications, may be interesting. It is a matter of evidence, however, with which the physician has not much concern, unless a malpractice action is brought against him; but it is a question for the legal profession to wrangle over whenever it arises in a case, the court room being the scene of battle.

Evidence "includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved." This matter of fact is proved by moral evidence alone, or that evidence which is not obtained either from intuition or demonstration. The question is whether the fact is shown by competent and satisfactory evidence. By competent evidence we mean that evidence which the very nature of the particular fact to be proved requires as the fit and proper proof. The evidence is satisfactory when it is sufficient in amount to ordinarily satisfy an unprejudiced mind beyond reasonable doubt. The question of competence of evidence is one strictly for the court; that of satisfaction is for the jury. The court is the tribunal which permits the testimony to be given, or "go in," as it is called, or excludes it. If the evidence is relevant the court can not refuse it admission into the particular case, unless he is prohibited from doing so by some express law.

There are some kinds of evidence which the law prohibits the court to admit on grounds of public policy because greater mischiefs would probably result "from requiring or permitting its admission than from wholly rejecting it." This rule has refer-

ence, in some cases to the person testifying as the husband or wife of the party, and in others to the subject matter regarding which he is interrogated, as state secrets, awards and professional communications. We are concerned here with the professional communications only.

By the common law the professional communications of a client to his legal adviser were the only communications protected. The foundation of that rule of protection is not on account of any particular importance which the law attributes to the business of legal professors, but out of regard to the interests of justice which cannot be upheld without them. If such communications were not protected no man would dare to consult a professional adviser with a view to enforce his rights, and enable the adviser to perform the duties of his office. But communications to the medical profession were not privileged. The early English case of the Duchess of Kingston, 20 Ho. St. Tr., 572, settled the common law rule as to whether or not the confidential communication to the physician was privileged. The court there held that the communication to the physician, no matter if strictly confidential, was not protected from disclosure. This was the law when our country began its legal business, and is the present law in those states which have not made such communications privileged by statute.

The earliest statute on the subject was an act passed many years ago in New York, (3 N. Y. Rev. Stat. 690, s 104), in which it was provided that

> "No person duly authorized to practice physic or surgery shall be allowed to disclose any information which he may have acquired in attending any patient in a professional character. and which information was necessary to enable him to prescribe for such patient as a physician or to do any act for him, as a surgeon."

This statute has furnished the nucleus for statutes in many of the states of the union, the states of California, Colorado, Indiana, Iowa, Kansas, Michigan, Missouri, Montana. Pennsylvania. Utah and Wisconsin having such a provision. The purpose of this statute was "to enable patients to disclose frankly to physicians their physical condition and clinical history without fear of publicity." Public policy seemed to demand that some such protection be offered and it had to be done by legislative enactment for want of a common law precedent.

The books are full of cases construing and applying the various statutes on this subject, some condemning the acts, others favoring them, with a hopeless confusion as to their application. Through it all there are certain clear principles discernable

which can safely be set down and which are in the majority of jurisdictions generally followed.

First of all there must be the relation of physician and patient existing before the statute can apply, though in New York state it has been held that if the circumstances are such that the patient believes that the relation exists the statute applies. The relation of physician and patient can, of course, be created in many ways, as by employment through third parties, by another physician, or by an employer. It makes no difference how the employment is made nor who is responsible for it. If the physician is acting in a professional capacity towards the person in the way of attendance upon him the relation is created. It is essential of course that the physician be acting professionally. If he is making a social call and learns facts concerning the person in question the privilege is not to be enforced as to such facts, unless the facts thus learned are confused with facts he learns in a professional capacity. In the latter case all the facts learned would be privileged because of his inability to separate them.

The professional party must actually be a physician. He must have complied with the statutory requirements of the particular state, or made a bona fide attempt so to do. He need not be the regular physician of the patient, but may be called in consultation in the same case by the regular physician. The patient must be the party whom the physician is attending, whether he is an adult, infant, lunatic, servant or other person, and the communications can come from the patient, from others present at the time, or from the physician's professional observation or examination of the case. If third parties are present at the time the physician is gaining his information, they are not privileged unless they are strictly necessary to enable the parties to communicate with each other. Examples of such necessary persons would be an interpreter, a parent of an infant, or a guardian or custodian of a lunatic.

The communications which seem to be held to be privileged within these statutes are in the main restricted to that information which is necessary to enable the physician to prescribe for or treat the patient, though there is good authority to the effect that the presumption is that the information would not have been imparted unless it was to aid the physician in prescribing for the patient. This is true in New York. In Michigan all disclosures by the patient to his physician respecting his ailments are privileged, whether necessary or not. In Indiana it is held that all information given by the patient in answer to the physician's interrogatories are privileged. It has also been held that the

physician would not be allowed to testify as to physical defects or degrading marks on the person of his patient. The rule does not prevent a physician from testifying that he is the family physician of a certain patient or attended him occasionally, or what the number and dates of his visits were. Of course, if the communications were made for an unlawful purpose they would not be privileged, for then the public policy of the state would be violated and crime encouraged. If a physician is sent by a person to examine a party to discover the extent of injuries for which that person may be liable, or to determine whether or not the party is sane, and in neither case the physician does not treat the party nor lead him to believe that he is treating him, the rule of privileged communications does not apply. Examples of this would be when a liability insurance company sends a physician to examine the party injured, which injuries by its policy of insurance it must make good; also in the case of a prosecuting attorney who sends a physician to examine into the sanity or physical condition of a particular prisoner in the county jail. In both illustrations the physician is not acting for the particular party in a professional capacity because he is not treating him or leading him to believe that he is treating him.

The wording of the statute in many states is peculiar and in many cases sets out limitations to the rule, or those matters which shall be exempt from the rule of privilege. These limitations have particular reference to testamentary matters. New York provides that the physician of a deceased person can testify as to the deceased's mental or physical condition when the validity of his will is in question. The executor can waive the provisions of the statute as to confidential communications for this purpose and so can the surviving spouse, or heirs or next of kin. This same provision exists in Missouri and Iowa, while California is opposed to it, making no exception to the rule after death.

In criminal cases the same rules of evidence apply as in civil cases. The same rules in regard to privileged communications are applicable to each. The only exception is that when matter which is in possession of the physician, and which it is sought to introduce, would throw light on the guilt or innocence of the prisoner, such evidence is generally not privileged.

This right of privilege is one strictly within the control of the patient. The physician has no concern about it. He has no duty in the matter except to keep still on the witness stand and if, after the lawyers get through battling over the question, the court directs the witness to answer he must do so. He does not incur any liability to the patient by his testimony thus given.

This privilege remains in full force when once created by statute until removed by the patient or his representatives. The death of either patient or physician does not destroy the privilege. The patient, his attorney in court, the parent or guardian of an infant or the personal representative of the patient may waive the right at any time. Some insurance companies are now providing in their policies for a waiver by the assured of the privilege of communication as to any physician or surgeon who attended him personally. The Supreme Court of Missouri sustains this stipulation and holds that it is binding on the representative and beneficiary on the grounds that what a party can waive at any time he can agree to waive prior to the necessity of such a waiver.

A constructive or implied waiver takes place by the patient or by the person suing the physician for malpractice. In such a suit the services performed were skillful or not skillful, or there was negligence in their performance. The essence of the case is what the physician did and to deny him the right to testify as to what he learned during his professional interviews would be to deny him the right of defense to the essence of the thing with which he is charged. It would not be a fair law which would compel a man to be skillful and then refuse him the right to show that he was skillful. How far the physician can go in the way of producing evidence to defend himself in a particular case is uncertainly fixed by the cases. Most authorities hold that the waiver of the privilege as to the defendant in a malpractice action by bringing the action is a complete waiver as to any other physician called in in consultation with him. Some go further and permit a physician to testify for defendant who treated the patient subsequently. This is rare, however. Such physician is most always called by plaintiff in the case, and of course that fact acts as a waiver of privilege as to him.

The chief classes of cases in which this principle of privilege is invoked are actions on policies of life insurance where the deceased's misrepresentations as to health are involved, actions for injuries where the condition of the plaintiff's body is to be ascertained, and in testamentary actions where the deceased's mental condition is in issue. Without exception the medical testimony is the most vitally important and decisive testimony, and is needed for determining the truth. The only purpose in all of them is to conceal the truth about the facts so as to perpetrate a fraud on the opposing party. Particularly is this so in questions of misrepresentations in life policies and in relation to injuries. There can be no fear in any of these classes that the absence of the privilege will hinder people from consulting physicians freely. They will go on in each class doing as they

have in the past. In these classes the rule is not then the most useful. It favors the unscrupulous without injuring the professional man in the least, and hinders in marked degree in many cases the carrying out of the ends of justice. The evilness of the application of the rule is apparent.

The physician is often placed in trying positions by virtue of this rule. Nothing can prevent his talking about a case outside the court room. That he is perfectly free to do so long as he does not arouse the ire of his patient, who feels so aggrieved that he brings suit for slander. Often it is his duty to speak from a moral or social standpoint, but his loyalty to his Hippocratic oath prevents him from violating the duty imposed by that oath, which says "My tongue shall be silent as to the secrets which are confided to me and I will not use my profession to corrupt manners or aid crime." By this oath he alienates his liberty of action and prevents himself from doing what his conscience tells him he ought to do. Many expedients have been suggested which it is thought would permit the exercise of the physician's social duty while not trespassing on the principles of true professional conduct, but objections have been made to all and no well founded and sound solution has yet been suggested.

There is nothing for the physician to do in the court or out of it but to keep still and speak only when the law commands him to speak.

A NEW POSSIBILITY FOR BLACKMAIL.

A bill was signed by Governor Odell (New York) some time ago making it a misdemeanor to distribute patent medicines so that children may get at them. It should be borne in mind by physicians that after this they may be blackmailed by some enterprising crooks if they neglect to empty out all patent medicines preparatory to throwing them in the waste basket. Ostensibly the bill is to have for its purpose the protection of the children of ragpickers, etc., who, tumbling over summer ash-barrels, find boxes and bottles of death-dealing drugs within them. Tempted by the seductive colors and tastes, they go to their doom unmindful of the dangers lurking in the patent medicines. Still another avenue to blackmail the physician seems to have been opened and we counsel caution.—Medical News, Aug. 8, 1903.

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

QUARANTINE UPHELD BY COURT.

Judge Davis, in Quarter Sessions Court, Philadelphia, recently dismissed the writ of habeas corpus brought to gain the liberty of Norman R. Hyland and his family, who were declared to be starving to death after a week's smallpox quarantine at their home. The action of the Bureau of Health in denying Hyland, his wife and three children the means to obtain food was said to be due to the man's persistent refusal to have one of his children, suffering from smallpox, removed to the Municipal Hospital. The Bureau of Health justified its action by the fact that the city has a hospital for all such cases. The attorney for Hyland demanded that the man be allowed to work or that the city provide food for the family. After hearing the testimony of both sides, Judge Davis said the case narrowed down to the question as to whether the Board of Health had a right to quarantine the house. This right was given, the Judge said, in an act of 1888. He stated that if the condition of the family was as stated it was unfortunate. "But," he continued, "if provision is to be made for families being under quarantine in their homes, there would be danger of many families being under quarantine for 365 days of the year."—Medical News.

MRS. ASHMEAD (DR. CONDE) COMMITTED.

On the charge of connection with the death of a negress, in which case the coroner's jury returned a verdict of death as a result of unprofessional surgery, Mrs. Elizabeth Ashmead, of Philadelphia, was committed to prison. She is alleged to have figured as "Dr. Conde" of the Conde Specialty Medicine Company. De Witt Ashmead, the woman's son, and Dr. Matthew McVicker were held as accessories, but were released on bail of $2,000 each.—J. A. M. A.

HERB DOCTOR CONVICTED.

George P. Hossey, the negro herb doctor who has been on trial for a week, charged with complicity in the murder of William G. Danze, was convicted June 26 of murder in the first degree. The jury was out a little over an hour. Danze died two years ago and the attending physician made out a certificate giving heart disease as the cause of death. The police became suspicious and after a careful investigation Danze's widow and Hossey were arrested. Danze's body was exhumed and arsenic ended her husband's life. She will be tried in the fall. It is was found in the stomach. It was later discovered that Hossey sold the arsenic to Mrs. Danze, with which, it is alleged, she charged that Hossey has been implicated in at least twenty murders.

FRENCH PHYSICIAN FINED.

Dr. Gillet, of the Department of the Meuse, Paris, an estimable gentleman, who, in addition to being a physician has been also a deputy and is at present the Conseiller General of his canton, ventured, not long ago, to take a train from Beauzee to Verdun. While he was en route a postal employee was taken suddenly ill in the mail carriage. The good doctor was called upon and, as any good doctor should do—whether in France or Timbuctoo—he immediately entered the mail carriage and gave relief to the sufferer. To enter a mail carriage under any circumstances is, however, illegal. Now, thanks to the Code Napoleon, thanks also to what Charles Laurent, in the Matin, calls the "intellectual incoherence" of a French tribunal Dr. Gillet has been sentenced to pay a fine of sixteen franc for having infringed upon the laws and regulations which govern the proper conduct of railroads.—Exchange.

SUIT AGAINST HOSPITAL.

Death from burns of a patient who was being prepared for operation in the General Memorial Hospital, New York, has caused the woman's husband to begin an action in the Supreme Court against the hospital to recover $100,000 damages, alleging that the death of his wife was due to the carelessness and inexperience of the nurse who, instead of making use of the electric light, placd a lighted candle in a tumbler on the bed, and thus caused the ignition of the alcohol and ether which she was using. It is said that this suit involves certain novel points.—Exchange.

A MALIGNERER DETECTED.

On behalf of an employee of the St. Louis and San Francisco Railroad named Hoskins an action for damages was recently brought. It was alleged that the plaintiff had been knocked out of a car door, sustaining injuries of a serious and permanent character, rendering him, as stated by one of the witnesses, "almost an idiot."

Dr. John Punton, of Kansas City, was employed as an expert witness by the railroad company, and when put on the stand his testimony was in opposition to that given by the other witnesses. He stated that the plaintiff was "over playing" his part as an insane man, and that the symptoms necessary to produce such a condition were absent, and that he believed the plaintiff to be a malingerer.

The plaintiff played his part so well, however, the jury rendered a verdict for him in the sum of $35,000.

It was finally decided to put the plaintiff under test to prove his condition. Dr. A. C. Walker, of Ft. Worth, Texas, had charge of the test. The plaintiff, now patient, was put in a sanitarium, given him to understand that he was to have an operation done on his head. When going under the anesthetic he resisted vehemently, and finally began to talk, which he had not done for nine months. Before the tests were completed he broke down and confessed that he was malingering all the time.

A new trial was given the defendants, and the young man and his mother were arrested for fraud and put under heavy bond.

JUDGMENT IN AN EDDYITE CASE.

The practice of Eddyism in Ontario has received a severe set-back at the hands of the Ontario Court of Appeals in the judgment delivered by that court in the case of the King against a citizen of Toronto who permitted his boy, aged 16, to die of diphtheria without providing him with necessary medical treatment. At the first trial the jury had found the prisoner guilty of manslaughter and the defendant's counsel had taken the case to the Court of Appeals. The decision of the Court of Appeals states clearly that they think that the learned judge at the first trial did properly charge the jury that the term "necessaries of life," as appears in the criminal code, includes medicine and medical treatment.—J. A. M. A.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I AUGUST 1903 No. 11

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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DEFENSE OF MALPRACTICE SUIT BY INSURANCE COMPANY

The Physicians Defense Co. has always contended that the so-called Physicians' Liability Policy issued by Casualty Companies are detrimental to the individual holder as well as to the profession at large, also that they are against public policy. This contention has recently been fully sustained by large verdicts against medical practitioners in actions for damages alleging malpractice in which the defense was conducted by the Casualty Companies under the terms of such policies.

One of the most recent actions of this character was brought against a physician of Superior, Wisconsin. The following clipping relative to the outcome of the suit is taken from the Telegram of June 26, 1903, published in that city.

BIG VERDICT AGAINST DOCTOR.

A verdict of $4,624.50 was rendered in the Superior Court today in the case of Peter Hay against Dr. J. Baird. The verdict was for damages on account of damages to the plaintiff because of the alleged improper setting of a broken leg sustained by him in February, 1902. Hay is a young man whose parents reside near

Aminicon lake, this county. It was claimed that the bones in the setting of the limb were not properly adjusted, but lapped over so as to prevent a proper cure. The defense claimed that the man had been sent from the hospital here in good condition as to the broken limb, but that he had broken it again and that it had then grown together improperly.

The trial of the case occupied three days in Superior Court. Attorney George C. Cooper appeared for plaintiff and Attorney H. H. Grace for the Travelers' Insurance Company, which defended in the case on account of the fact that the doctor was insured with that company against damages from malpractice suits. The verdict is the largest ever obtatined here in such an action.

From such information as is available we presume that the defendant in the above action carried with the Travelers' Insurance Company one of their Surgeon's and Physician's liability policies indemnifying in the amount of twenty-five hundred dollars at an annual premium of ten dollars. To one who has made a study of the defense of malpractice suits, the conclusion reached from a reading of the foregoing clipping must indicate that the knowledge of the possession of this indemnity by the defendant influenced the jury in rendering its decision. The statement "the verdict is the largest ever obtained here in such an action" should indicate this to even the casual reader. If the defense set up, "that the man had been sent from the hospital in good condition as to the broken limb, but that he had broken it again and that it had then grown together improperly," is true, it should have relieved the defendant of all liability.

In an action for damages alleging malpractice, there must first of all be proven an act done or omitted by the defendant resulting in injury to the patient directly therefrom. The plaintiff must show that the defendant was failing in the requirements of skill, care, and attention, either in their possession or in their exercise, and that as a direct result of that failure, he was injured. From the testimony of the plaintiff and witnesses (those who had the advantage of personal contact and knowledge of the plaintiff's condition at the time the services were rendered), together with conclusions drawn from hypothetical questions by expert witnesses, the jury must decide as to whether the physician was incompetent, negligent or unskillful and whether injury resulted and the amount of compensation.

It is a well known fact that ordinary damage actions have greatly increased against employers since the introduction of Employers' Liability Insurance. Previous to the issuance of pol-

icies of this character, there was a closer bond of interest between the employer and employee, and the latter seldom brought an action for damages as the result of an injury sustained in his employment. But the advent of the liability policy has removed this feeling of interest on the part of the employee. Now he has no hesitancy in bringing his suit against his employer knowing full well that if the verdict is in his favor it will not injure his employer nor will it cost the latter a dollar, as a corporation who has collected thousands of dollars in premiums for this very purpose, must pay the judgment. The country is full of attorneys who derive their entire means of livelihood from the prosecution of actions of this character. Suit is threatened with claim for large amount in damages, but an offer is usually made to compromise for a small sum. The prospects of recovering in either event are in favor of the plaintiff. If the action goes to the jury, the attorney for the plaintiff relies to a very large extent upon the sympathy in favor of the poor plaintiff as against the rich corporation. No consideration is given under such circumstances to the employer. In the minds of the attorneys, the jury, and the public, the action is practically the employee against the Insurance Company. A number of instances have been brought to the attention of the writer where actions of this character had been commenced and the attorney for the plaintiff afterwards learned that the policy held by the employer did not cover in the particular case, whereupon the action was dismissed. Neither attorney nor the employee desired to bring an action directly against the employer, knowing full well that their chances of recovery were materially reduced. It is every day being demonstrated that the above holds equally true in an action by a patient against his medical attendant. One who would hesitate to bring a suit alleging malpractice—incompetency, unskillfulness, and negligence—against his medical attendant, knowing that the notoriety of such suit is detrimental to the physician's professional standing, would upon learning of the existence of the indemnity policy lose sight of the physician's loss and bring his action. Thus we see that policies of this character not only are an incentive to bringing malpractice suits, but render their defense more difficult, making it as a rule practically impossible to vindicate at the jury trial the physician's work and treatment.

Let us look at the physician's position, under the liability policy, when called upon to defend a malpractice suit. The policy (a copy of which is before the writer) agrees to indemnify the holder "against loss from common law or statutory liability for damages on account of bodily injuries, fatal or non-fatal, suffered

by any person by reason of any error or mistake made by the assured," subject to certain conditions.

The policy provides that the Company will, at its own cost and in its discretion either settle the same or defend against such proceeding unless it shall elect to pay to the assured the indemnity provided for. According to this clause of the policy, in the event suit is brought against the holder the company has the right, to be exercised in its discretion, of compromising the suit, defending in the policy holder's name, or electing to indemnify. It is a foregone conclusion and requires no argument, that no professional man can afford to place his reputation in the hands of another, let alone a corporation, and to obviate the physician's objection to this feature of the contract, the Casualty Companies are in the habit of placing a rider on their policies to the effect that the company will not compromise without the physician's consent. This prohibition is, however, vitiated by a following clause which provides that the physician "shall aid in effecting settlement" when requested by the company. The second right of the company to defend the action we have shown by the conclusions relative to the action against Dr. Baird, to be prejudicial to the policy holder's interests, there is therefore left but the indemnity feature. This can be best analyzed by considering the policy holder's position after the verdict is rendered. In the case of Dr. Baird a verdict of $4,624.50 was rendered and in order for him to collect the indemnity from the company (under the terms of his policy) he must first pay this judgment, for according to the provisions of the policy "no action shall lie against the company by any person other than the assured himself, to recover any sum under this policy and then only to reimburse him for loss actually sustained and paid by him in satisfaction of a judgment after trial of the issue, . . . an action may be brought against the company by the assured within thirty days after final judgment has been rendered and satisfied as above." It becomes necessary, therefore, for Dr. Baird (under the provisions of the policy) to pay this verdict of $4,624.50 before he can recover from the company. If, as we take it, his policy was a Ten Dollar premium policy, the liability of the company thereunder is but $2,500. The doctor is therefore out of pocket $2,000 besides the injury to his professional reputation, neither of which in our opinion would have occurred if he had defended the action and the indemnity policy had not been in existence. If the company is disposed to stand on the strict terms of its contract, we question whether the doctor can recover anything from the company in this action, as the policy provides that it will indemnify "against loss from common law

or statutory liability for damages on account of bodily injuries, fatal or non-fatal suffered by any person by reason of any error or mistake made by the assured in the practice of his profession." Malpractice is bad or unskillful practice on the part of the medical attendant whereby the health of the patient is injured. To constitute malpractice a physician must be incompetent, that is, lacking in knowledge and ability to perform the services which he undertakes; unskillful in rendering the services, or negligent in his attendance, treatment, diagnosis and instructions. If he is competent; if the services rendered were such as would be rendered by the average skilled physician; if they were rendered in a skillful manner; if he does not neglect the patient; if he, in all cases of doubt, exercises his best judgment, the law says that he cannot be held for results. An unintentional error or mistake, without it arises from a lack of knowledge or skill or the failure to exercise best judgment, cannot be classified as malpractice. They fall within the purview of accidents, those unforseen contingencies which arise, and for which the ordinary prudent man does not prepare and cannot foresee. The law, as it applies to the practice of medicine, does not hold the physician responsible for unintentional errors or mistakes, without, as said above, they arise from incompetency, unskillfulness or the failure to exercise best judgment. A verdict against the physician, carrying a judgment for malpractice, must be accepted as conclusive evidence that the damages arose through incompetency, unskillfulness or negligence, and not through unintentional error or mistake. Such being the case and the Indemnity Policy providing for error or mistake only, we do not see how the physician can recover if the company stands on the strict terms of the policy.

The most important principle in the defense of a malpractice suit, in our opinion, is one which has not been presented in this article. It is one of vital importance to the profession, and in every instance where it is brought to the attention of the ethical practitioner, receives his unqualified approval. We refer to the ethical principle.

The competent ethical practitioner, when once assured of the fact that the law requires nothing from him but that he have the knowledge and be qualified to fulfill his obligations to his patients, that he render his services in a skillful manner, with due care and attention, does not desire any one to stand sponser for his work. He knows that he is competent, skillful, and attentive; that he does not neglect his patients, and is therefore not afraid of the results of his work. Should an action for damages alleging malpractice be brought against

him, what he most desires is a skillful and vigorous defense. For the incompetent, unqualified practitioner, the quack and advertising charlatan, who guarantee results, a contract to indemnify in case an action is brought is to be desired. Unquestionably, practitioners of this character will in every instance purchase indemnifying policies. For the reputable practitioner to do so is to contribute the funds to an insurance company out of which losses, sustained through judgments rendered against unethical practitioners, are to be met. In other words, financially contributing to the protection and maintenance of quack practitioners.

Furthermore it has been considered as against public policy, by state officials to whose attention the matter has been brought, to issue a contract agreeing to indemnify a physician against the results of his own incompetency, unskillfulness or negligence. In their opinion such insurance will have a tendency to cause certain men in the profession to become negligent and careless, while others will undertake to render services for which they are incompetent and to perform operations for which they are unprepared. It is for this reason that the Casualty Companies have been forbidden issuing Physicians' Liability Policies in certain states.

TRAVELERS' INSURANCE CO. IN ILLINOIS

Quo warranto proceedings have been brought by the Illinois Insurance Department against the Travelers' Insurance Company in the Circuit Court of Cook County to determine the right of that company to do a liability business in that State. The proceedings promise to prove of unusual interesting owing to the fact that the suit is intended to test finally the right of companies to do multiform business in that State under the present laws. The company has been doing liability business for some years, as well as life and accident business. In the event of a decision adverse to the company penaltics will be asked for.

The laws of Illinois provide that insurance companies can do certain prescribed lines of business. That no company can be organized under the laws of Illinois to do more than one kind of insurance. The Travelers' Insurance Company, as well as other casualty companies, have continued to do multiform lines of insurance in Illinois, contrary to the rulings of the Insurance Department. It is under these conditions that the so-called physicians' liability policies have been issued and sold to the medical profession. If the decision is adverse to the insurance company the question arises as to the legality of the policies issued to physicians for indemnity in alleged malpractice.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

TO MAKE ENTRANCE EXAMINATIONS MORE RIGID.

The Kentucky State Board of Health, at its June meeting, passed the following preamble and resolutions:

Whereas, In violation of published requirements, many low-grade schools offer private inducements to medical students for admission, reduced time of attendance on lectures, scholarships and reduction of fees, to induce them to enter on the study of medicine to their own disadvantage, and contrary to the interests of humanity; be it

Resolved, That the State Board of Health of Kentucky will not recognize as reputable any medical college which violates its published requirements for admission, tuition and the time of attendance at the annual sessions, which requirements must be definitely expressed. The college shall require of each applicant for matriculation evidence of good moral character and a certain showing that he is a graduate of a recognized normal school, high school, academy or college of literature, science or arts, or a certificate from a county superintendent of public instruction showing that he has passed a satisfactory examination in the following branches: In English, composition, submitting a composition on some subject of general interest embracing not less than two hundred words, which shall be considered with reference to spelling, punctuation, thought and construction; in arithmetic, showing knowledge of decimal fractions, percentage and compound numbers; in algebra, simple equations; in Latin, first year of one ordinary Latin course; in physics, the elements of mechanics, hydrostatics, hydraulics, heat, optics and acoustics; or, in default of such certificate, he shall be examined in the above named subjects by the superintendent of schools in the

city in which the college is located and obtain and present his certificate.

No college shall offer or accept scholarships, or any reduction in fees, except as provided for and required under state laws, or under the laws of endowed universities.

No note accepted by any college in payment or part payment of fees, or any form of rebates will be recognized as complying with the above requirements, and no student shall be given credit for attendance on lectures, or for examination for advanced standing until all fees shall have been paid, nor shall the degree be conferred on anyone under other conditions.

Each student must have been in actual attendance for the full term in each of the four years required in the curriculum.

Each applicant graduating on and after July 15, 1903, shall make affidavit of compliance with the above requirements for each and every year after July 15, 1903.—J. A. M. A.

POWER CONFERRED ON STATE BOARD.

The late legislature of Nebraska conferred on the state board of health supervision over all matters relating to protection of people of the state from contagious diseases. The board is given the right to formulate quarantine regulations and may act in certain localities where the local board may be lax or where no local board is organized in which case the expense shall be borne by the city, village or county within which the same shall have been incurred. A penalty of a fine of $15 up to $100 is imposed for failure to obey the rules of the state board. The board shall collect and preserve such information as may be useful in the discharge of its duties and for dissemination among the people.

Local boards of health, and physicians where there are none, shall report the existence of cholera, yellow fever, smallpox, scarlet fever, diphtheria, etc. and a penalty for failure so to do is imposed. The board shall appoint an inspector to serve for one year who shall be a graduate physician of practical experience, at an annual salary of $1,800.00.

The board may refuse to issue a certificate, or may revoke one already issued for any of the causes defined in this section, to-wit: The employment of fraud or deception in applying for license on diploma or in passing the examination provided for in this act; conviction of crime involving moral turpitude; habitual intemperance in the use of ardent spirits, narcotics or stimulants; unprofessional or dishonorable conduct. The words "unprofessional or dishonorable conduct," as used herein, are declared to mean: First, the procuring or aiding or abetting in procuring a criminal abortion; second, the obtaining of a fee on

the assurance that a manifestly incurable disease can be permanently cured; third, betrayal of a professional secret to the detriment of a patient; fourth, causing the publication and circulation of advertisements of any medicine or means whereby the monthly periods of women can be regulated or the menses can be established, if suppressed; fifth, causing the publication and circulation of advertisements of any kind relative to disease of the sexual organs tending to injure the morals of the public.

It shall be unlawful for any person to practice medicine, surgery or obstetrics without first having obtained a license from the state board of health. The applicant must be a graduate of a school of medicine in good standing and shall take an examination part of which shall be before members of the board, who are of the same school of medicine as that of the applicant. Practitioners from states having equal requirements may be admitted without examination. The examination fee for graduates of Nebraska colleges is $10 and for all other persons $25, the fees to be divided between the four secretaries of the board of health.

RECOMMEND REVOCATION OF LICENSE.

The Secretary of the State Board of Health, on August 6, recommended the revocation of the license of Dr. Charles W. Downs, Omaha, for violation of the law forbidding the distribution of advertising relating to sexual diseases which tended to corrupt the morals of people. The advertising is considered of a particularly vicious nature. Downs appeared before the board and made the defense that he did not know there was such a law.—Exchange.

POWERS OF BOARDS OF HEALTH.

In the case of State vs. Kirby, the supreme court of Iowa said :

"It is unquestionably true that the preservation of the public health is of paramount importance to the state at large, as well as to local communities, and that the state, in the exercise of its police powers, may confer upon the state and local boards of health whatever powers are deemed necessary for the preservation of the general health of the community or of the state. It may perhaps be conceded that, even in the absence of express statutory authority so to do, the authorities of a local community would have inherent or implied power to adopt such rules and regulations as were reasonably necessary for the preservation of the public health of such community; but whenever the state has expressly conferred such power it must be exercised as provided in the grant."—Exchange.

MASSACHUSETTS BOARD OF REGISTRATION.

July 14th more than 200 applicants appeared before the Massachusetts Board of Registration and took the examination. It is claimed that this is the largest number that ever appeared at one time for examination to practice medicine.

MICHIGAN BOARD REFUSED TO REGISTER A PHYSICIAN.

Dr. D. M. Coonley from the Michigan College of Medicine at Detroit has applied to the State Board of Medical Registration for a certificate to practice in that state. This Board declined to register the applicant on account of the unenviable and unethical notoriety he had gained. It is claimed that the doctor received his diploma only upon signing an agreement to quit the patent medicine business.

UNLICENSED PRACTITIONER ARRESTED.

W. S. Howard has been arrested in Frostburg, Pa., and held in $300 bail, charged with practicing medicine without license from the State Board of Medical Examiners.

"WONDERFUL GENTILE AND JEW HEALERS" BANISHED.

Posing as instantaneous and permanent healers of all diseases, "The Wonderful Gentile and Jew Healers," E. C. Smith and G. Ephraim, were expelled from Lincoln, Neb. recently.

OSTEOPATHS DEBARRED FROM VACCINATING IN OHIO.

The Ohio State Board of Health was recently petitioned by Cincinnati physicians to debar osteopaths from vaccinating school children. The petition was sustained. It was held that the practitioners of osteopathy should not practice surgery even in the minor degree of vaccination.

PHYSICIANS CONVICTED AND FINED.

The decision against Drs. J. G. Stewart and O. V. Lawson, of Seattle, Wash., convicted of conspiracy to obtain possession of the examination questions used at the January session of the State Board of Examiners, has been sustained by the Supreme Court. The fine imposed in each case, $500, will have to be paid.

FEE-SPLITTING IN THE FRENCH COURTS.

A certain family physician at Joigny charged $100 for his share in conducting a case which required an operation for which the surgeon's charges were $400. The affair was carried into the courts and the physician's right to remuneration in connection with the operation was conceded, but the court decided that he must not charge in proportion to the expense of the high-priced consulting surgeon, but must be content with $30 instead of $100, thus fixing a standard rate for the attending physician in such cases. The "Progress Medical" comments that a fixed charge is incompatible with the sliding scale generally adopted by the profession in accordance with the patient's means, from zero upwards. It cites as a laudable attempt to solve the question the suggestion by certain medical syndicates that the family physician should receive one-fourth as much as the surgeon. If this rate were once accepted and incorporated in the medical relations with the public, the latter would know beforehand and could count on the expense of an operation and the after-care, and there would be nothing to conceal nor any suspicion of indelicacy on the part of the medical corps. The editor of the "Gaz. Med. Belge," commenting on the same affair, remarks that the family physician cannot always count on the good will of the family in respect to his emoluments in such cases. He suggests as remuneration for the responsibility of the diagnosis, preparation, etc., by the attending physician, that the specialist surgeon should charge a lump sum for himself and his aids, and that the attending physician should be considered and remunerated as one of his aids in the operation, which, of course, in most cases would amount to "division of fee."—Exchange.

MAGNETIC PHYSICIANS ARRESTED.

It is reported from Omaha, Nebr., that Chester Parker and W. F. Hall, styling themselves "Magnetic Physicians," have been arrested at Omaha and will be brought back to Peoria, Ill., at which place they swindled many people out of various sums from $25 to $100 for so-called magnetic treatment.

ILLEGAL PRACTITIONER FORFEITS BOND.

Dr. M. E. McGrath has fled from the city of Denver, Colorado, forfeiting his bond of $50, where he was arrested for practicing medicine without a license.

PENALTIES FOR CHARLATANS' ADVERTISING IN GERMANY.

The editor of the advertising portion of the Breslau "General-Anzeiger" was warned by the authorities in regard to the fraudulent character of the ads of a certain charlatan named Malisius, who claimed to cure all diseases. He continued to print the ads and has recently been condemned by the Breslau courts to a fine of 3050 marks, about $765. The court stated that the editor in publishing the advertisement was more culpable than the charlatan, as if the papers did not aid the quack he would not become so well known. Malisius himself was condemned on 22 counts of accomplished and 9 of attempted fraud, to a fine of 1500 marks, or $375, and eighteen months' imprisonment. A woman at Elberfeld has also been fined $40 because she advertised that she treated gynecologic affections, kidney and bladder troubles, gout, etc., "according to the latest scientific methods and researches," but was compelled to confess that she had not the slightest knowledge of recent scientific research.—J. A. M. A.

PHYSICIAN WINS SUIT.

Dr. Charles F. Wicker has settled for $1000 the suit brought against the village of Saranac Lake, N. Y., for $1200 for care of smallpox patients, in which a judgment was rendered in his favor of $1100 and costs.

MINNESOTA'S COCAINE LAW.

The sale of cocaine in Minnesota is to be regulated under a bill recently introduced in the lower house of the legislature of Minnesota. Under this bill cocaine may be sold at retail only by pharmacists, and at wholesale only to pharmacists. Druggists may sell cocaine only on the written prescription of a physician or dentist, and such prescription may be filled but once. It is also provided that any patent medicine, catarrh powder or remedy, snuff, cream or other mixture containing cocaine, must have a label stating that fact in the English language. A violation of the act is made a misdemeanor, punishable by a fine between $50.00 and $100, or imprisonment from thirty days to one year. One-half of all such penalties shall go to the State Pharmacy Board, and one-half to the county school fund.

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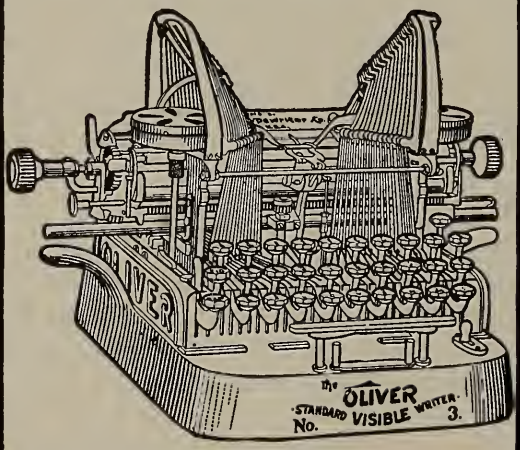

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SEPTEMBER 1903

MEDICO-LEGAL BULLETIN.

Vol. I No. 12

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My full name is.....Office No.....St.

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If connected with a firm, the style is.....

I graduated from the.....in the year.....

I practice under the.....School of Medicine; and have been duly Registered and Licensed to practice in this county, under the Laws of this State. Certificate No.....from the.....

I agree that this contract shall not cover suits for damages in which services were rendered while under the influence of liquors or drugs.

I agree to notify the Company at once by telegraph or telephone when demand is made, or suit commenced for damages, and will not make nor contract any expense without the written authorization of the Company, and will contribute my own time and assistance in defense of the case without charge to the Company.

I warrant each and all of the statements made herein to be true and complete. I also warrant that this application has been made and written by myself or duly authorized agent and that I understand its provisions

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THE PHYSICIANS DEFENSE COMPANY

hereby agrees to defend _____ of the City of _____ County of _____ State of _____ against all civil suits for damages for malpractice based on services rendered during the term of this contract and to pay all the cost and expense of defending such suits not exceeding **FIVE THOUSAND DOLLARS** *in defense of any one suit not exceeding in the aggregate* **TEN THOUSAND DOLLARS** *in defense of suits based on services rendered within one year from the date of this contract or within any one year for which this contract shall be renewed all in the manner and upon the conditions herein below stated to wit:—*

Immediate notice by telegram must be given the company at the Home Office at Fort Wayne, Ind., and followed by written notice, giving full particulars of suit brought against the holder hereof.

Upon receipt of notice from the holder hereof that a suit has been commenced against him for damages for civil malpractice, the company will send its representative to the holder hereof. The company's representative and the holder hereof shall make a selection of a local attorney, who, together with the company's attorney, will defend the case without expense to the holder hereof.

Such defense will be maintained until final judgment shall have been obtained in favor of the holder hereof, or until all remedies by appeal, writ of error or other legal proceedings shall have been exhausted, or until the sum of Five Thousand Dollars shall have been expended in the defense; provided said company shall not be under obligation to expend more than Ten Thousand Dollars in the aggregate in the defense of suits based on services rendered during the original one year term or any renewed one year term of this contract.

The company shall not settle or compromise any suit or claim for malpractice against the holder hereof which it is bound by this contract to defend, except by the consent of the holder hereof, and then only at its own cost and expense.

Said company does not obligate itself to pay or to assume or to secure the payment of any judgment rendered against the holder hereof in any suit defended by it.

No suit or claim will be defended by this company in which the cause of action arose previous to the date of this contract.

This contract does not cover criminal prosecutions nor suits for assault, criminal abortion, foeticide, homicide or other criminal act.

The company may cancel this contract at any time upon written notice mailed to the holder hereof, and the unearned portion of the consideration shall be returned to the holder hereof.

This contract does not take effect until the consideration therefor shall have actually been paid to the company or its authorized agent; but if the holder shall have paid such consideration and shall have received from the company or its duly authorized agent a memorandum certifying such payment and that the contract is to be subsequently delivered, then this contract shall be dated as of the date of such payment and shall be in force and effect from that date.

If a note shall be accepted for the consideration of this contract or any part thereof, and the maker thereof shall fail to pay the same at maturity, the company may at its election, to be exercised at any time after non-payment of said note at its maturity, treat this contract as forfeited, and return such note, and in that case this contract shall be null and void from the beginning, and any part of the consideration theretofore paid shall be forfeited to the company.

No renewal of this contract shall take effect or be in force until the consideration therefor shall have been paid to the company or its duly authorized agent.

This contract shall be void if the application signed by the holder shall be in any particular untrue.

This contract is renewable only upon payment of the annual consideration in advance at the Home Office in Fort Wayne, Ind., or to an authorized agent of the company, in exchange for the company's receipt, signed by the president and secretary and countersigned by the agent.

No consideration or agreement, contained in this contract, or application for same, can be waived or altered in any manner by any person, other than the president or secretary in writing endorsed hereon.

In Witness Whereof, The Physicians Defense Company has caused this contract to be signed by its president and secretary and its official seal attached hereto in Fort Wayne, Ind., this _____ day of _____ 190__

A. F. Buchman.
President.

_____
Secretary.

Medico-Legal Bulletin.

ORIGINAL ARTICLES

LIABILITY OF PHYSICIANS' PROPERTY IN MALPRACTICE ACTIONS

Physicians and surgeons are just as anxious to preserve their earnings intact for future contingencies as are their fellow men. The physician not only makes provision for the future, but he looks at that provision in a different light than most any other person. It is liable to be attacked or assailed by an unscrupulous patient at any time, and his hard earned income may be wasted in appeasing such patient's wrath or revenge.

Every physician's ambition is to make all the money he can and in this he is not unlike the rest of us; but owing to the peculiar relation which he bears to society, he is perhaps more concerned in the safety of that income than most of us, and how to preserve it intact against assault has no little weight in his mind. Many schemes have been resorted to to solve the situation, with more or less success, and it is this attempted solution which we will take up for consideration.

We have heard many physicians say "I have nothing which a patient can get if he sues me for malpractice; all my property is in my wife's name." We have also heard of physicians turning over to their wives all their income just as though they were in the employ of their spouses. This is done, of course, under the assumption that the income and property is then safe from attack. If it is safe, it is because the law makes it so, and not upon any matter of right.

Our early law gave a woman very few rights. She could hold no property because everything she had at her marriage went to the husband and consequently during her marriage she could hold nothing. England and our country were not willing to leave such an unfair and inequitable state to exist very long. Great Britain and the most, if not all, our states passed, many

years ago, a "Married Woman's Act," which has received many amendments and broadening improvements until at the present day a married woman stands, as regards her property, in almost as free shoes as her husband. By these statutes she can take, acquire and hold property, real and personal, by conveyance, gift, devise or descent, or by purchase with her separate means or money, just as though she were single, and do with it as she chooses, within certain limitations which go to protect it from waste.

Under a statute like this, (which many of the states have enacted, though not all) the wife could accept any money or property the husband desired to give her with which she can do as she pleases, apparently free from his debts. This means that the physician can turn over to his wife such money as he desires, or buy property in her name, or give her such things as he wishes at any time, and, generally, as to such gift, no one can complain. Such a situation seems to afford a means of protection to a physician. He can place his property beyond his own control and apparently beyond the reach of his creditors.

As a householder he would be entitled, as against most creditors, to the usual statutory exemption which exists in many of our states. This exemption, being one for a contract debt only, has no reference to the debt created by a judgment for malpractice, since the action of malpractice is invariably one of tort, though in each case the tort is based on the contract of employment. Nothing then belonging to the physician would be exempt from levy in execution of the malpractice judgment. An exception, however, would probably consist of his tools and books and things necessary to the practice of his profession. But otherwise than this, his property, real or personal, of all kinds is subject to this levy. And so he is prompted to avail himself of this particular statute, and put the property under the protection of the law. But does the law afford this protection at all times and for all occasions? Can the physician keep on buying property of all kinds and put it in his wife's name or turn over to her all his income, so that a malpractice-judgment-creditor cannot realize anything at all? Or is there a limit to which he can go in this sort of transfer?

There is a well established common law rule that a man can prefer one creditor over another, in the absence of fraud, without any other creditor taking exception to it. The principle upon which the common law right to make preference rests is, that since each creditor is justly entitled to the whole sum due him, no legal wrong is done to any creditor by the payment in full of the demand of any other, to the exclusion of his own.

But the practice of preferring creditors has led to so many abuses, and is so obviously opposed to the principle that "equality is equity," that preferences in any form have in recent years been reluctantly allowed by the courts, and the right to make them has been greatly curtailed by legislative enactments. The bankruptcy law vitiates such a preference if it was made within a certain time prior to the declaration in bankruptcy of the bankrupt, and made with the knowledge that the bankrupt was insolvent. The property thus transferred must be returned by the party getting it. Many of the states have also modified this common law rule by enacting laws which declare a preference void that was made in bad faith by a debtor in failing circumstances. In other states a preference is absolutely prohibited, no matter how made. If a preference is not restricted or prohibited, the debt preferred must be bona fide, and the debtor cannot on the pretense of giving the preference, secure to himself the future control or benefit of the property or its proceeds, nor can he exercise the right in such a way as to unreasonably hinder and delay his creditors.

The physician in transferring his property to his wife or any one else, assumes the risk of violating the statute of his state, or the common law rule that the debt must be bona fide and the preference made so as not to unreasonably hinder and delay his creditors. If he owes debts and turns over his property or income to his wife, he must owe her a bona fide debt. It must be a debt which was theretofore created in good faith, such as a loan to him. Provision for the necessaries of life thereafter would not be a legal debt, though it would be a moral debt to her. If the transfer to her is made to avoid paying or hindering his creditors, it would then be of no avail and the creditors could take the property in satisfaction of their claims. The validity of the transfer to his wife, therefore, depends on the non-existence of creditors and the lack of intent to defraud on the part of the physician in making it. If there are no creditors, there is, of course, no question to arise, or if there are creditors, his wife being one, and the physician turns over all his property to secure her debt, not to avoid paying or delaying other creditors, there is also no question to arise as to the transfer, unless the statute of the particular state declares it to be void. But where he is in debt and purchases lands in the name of his wife, but with his own funds, the courts are regarding this as a conveyance in fraud of creditors. They do not treat such a conveyance as void but consider the wife as a trustee holding the property in trust for the benefit of her husband's creditors. The result is the same, however, so far as the creditors are concerned,

whether the conveyance is avoided or not, as the creditors receive satisfaction from the property whether it is held in trust for them or the court orders the wife to deliver it up to be levied upon.

The same situation is presented when the physician turns over to his wife all of his income. If she puts the money into property in her own name, no one can complain unless his rights are invaded. If the physician has debts and does not pay them out of his income before giving it to his wife, the law will say he is perfecting a fraud upon his creditors and compel the wife to give up the money or any property purchased by it. Suspicion always rests upon all purchases of real or personal property by the wife during coverture, and when her husband's creditor is attempting to satisfy his debt out of this property she must assume the burden of showing that she bought the property with her own personal estate. If he has given her all his income, it is fair to presume, in the absence of this showing by her, that the property was purchased with his income and his creditors can reach it to satisfy their claims. If the husband gives his wife, from time to time, various amounts from his income, but retains sufficient to pay his debts, and the wife uses this fund to purchase real estate in her own name, his creditors cannot reach it, because he has not fraudulently given away his income.

Who are creditors within these rules and statutes?

The statutes in many of the states have attempted to define the term "creditors"; but no comprehensible definition can be drawn from them because the word is used in reference to some particular subject matter. In regard to the subject of fraudulent conveyances the term has been used in many ways. The courts have construed this term not in its strict technical sense, but have given it a liberal construction, and they have held the word to include all parties who have demands, accounts, interests, or causes of action for which they might recover any debt, demand, penalty, or forfeiture. These interests are especially protected by the statute and therefore the persons having such interests must be included.

Until a judgment for malpractice is rendered there is no judgment creditor, and the question is whether the patient has any claim against the physician such that he could collect his judgment, when obtained, on property transferred to the wife prior to the recovery of his lien. This depends upon the usage of the term "creditor" as just mentioned. If it means only those whose claims are fixed or liquidated at the time of the conveyance, then the patient has no opportunity or cause for complaint; but if it means one who has a demand which may or may not be-

come liquidated or determined in amount then the patient can have something to say. In other words, the satisfaction of his judgment will depend upon whether the law recognizes a judgment for a tort, obtained after the fraudulent transfer of property, as having any standing so as to be satisfied out of this transferred property.

The courts have considered whether or no a claim for damages for a tort puts its possessor in the position of a creditor in this connection. There is considerable diversity of opinion upon the subject, but by the weight of authority the rule seems to be that a man having a claim arising out of a tort or contract is a creditor, and therefore entitled to attack a fraudulent transfer of property made prior to the recovery of a judgment on said claim. This rule has been set down in Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, New York and other states, and is apparently quite generally followed. So that in those states in which this rule is upheld, a patient having been injured by a physician can satisfy a malpractice judgment obtained for those injuries, on property fraudulently transferred by the physician before the rendition of that judgment, the transfor having been made subsequent to the injuries received by the patient.

Suppose the physician transfer his property to his wife before the injuries to the patient have occurred, can the patient then hold the transfer void and satisfy his judgment out of that property?

In such a case the patient is a subsequent creditor and whether he can hold the transferred property to satisfy his judgment will depend upon what situation the law places a subsequent creditor as regards prior transferred property. The courts in various states are now holding quite uniformly that if the husband transfers his property to his wife with the actual intention of defrauding, hindering or delaying all creditors generally, subsequent creditors can subject that property to their claims, because a subsequent creditor has a right to rely upon all property which would be subject to the payment of his debt and a fraudulent transfer of it affects him just as much as it does a prior creditor. If the husband intended to prevent that property from applying to his debt subsequently contracted, as well as to prior ones, then the property is not safe from attack from the malpractice creditor even though the services were not performd until after the transfer of the property. The intent of the husband in making the transfer is the controlling factor in the case, and this intent will be inferred from actions and circumstances attending the transfer at the time, and up to the day of trial.

As regards the transfer of his property, real and personal, to his wife, the physician therefore stands in these positions: (1) If he is solvent at the time and retains enough money to pay his debts, including in those debts a claim for malpractice then in existence, no question can arise; (2) if he is solvent at the time, but the transfer of the property renders him insolvent, he must show that the transfer of the property was in payment of a bona fide debt to his wife; (3) if he is solvent at the time, the transfer to his wife is void unless the money is in payment of a debt to her and provided there is no statute expressly avoiding such a transfer; (4) if he makes the transfer to his wife for the purpose of defrauding, hindering or delaying his creditors, the transfer is of no avail to his creditors, whether they are prior or subsequent to the transfer and they can take the property in whatever form it is found. And if the creditor does attack the property in the wife's name, she must show that she bought it with her own money and not with her husband's.

The physician is therefore not absolutely sure that when he turns over his income to his wife or buys property in her name that the malpractice-judgment-creditor is estopped from recovering anything from him. No man can tie up his property so that the law cannot get hold of it some time. A judgment is good for many years—from ten to twenty years in the various states—so that the creditor has plenty of time to collect it. The better and safer way to do is for the physician to fortify himself with protection as he goes along and not leave it entirely to "holding nothing." His reputation is something as valuable as that.

DIFFERENT KINDS OF DOCTORS CONSIDERED.

In State v. McKnight, (N. Car.) 59 L. R. A. 189, Clark, J., says: "We attach no weight to the argument that the defendant hung out his sign and advertised himself as 'Doctor.' The special verdict finds that he had a diploma from a college of osteopathy bestowing that title upon him. There are many kinds of doctors besides doctor of medicine—as doctors of laws, doctors of divinity, doctors of physics, and veterinary doctors, and others still. Besides, in this country, so far at least as titles go, 'honors are easy.' We know from common knowledge that druggists' clerks are ordinarily addressed as 'doctor,' justices of the peace are usually called 'judge,' and a teacher of the saltatory art always styles himself 'professor,' while Yarborough House 'colonels' and 'honorables' by courtesy of like tenor are almost as

> " ' Thick as autumnal leaves that strow the brooks
> In Vallombrosa.'

Certainly the courts cannot abate a man as a nuisance because some one gives him, or he gives himself, a title."

Judicial Decisions.

Under this heading will be presented each month information relative to judicial decisions affecting the medical profession.

WHAT PHYSICIAN MAY RECOVER WHEN OWN CHILD INJURED.

The Court of Civil Appeals of Texas says, in St. Louis Southwestern Railway Company of Texas vs. Gregory, that physical or mental pain suffered by an infant, by reason of personal injury or wrong inflicted by the negligence of another, is not an element of damages which the parent is entitled to recover, but the right to recover damages for such pain is personally that of the infant. If, however,the pain which the child suffers is such as to incapacitate him for services to his parent, the latter will be entitled to recover damages, not for the pain, but as compensation for the loss of services caused by the pain to the child. Though an infant be injured, there is no right to recover by the parent therefor, unless the injury be such as to cause loss of services, or require, at the hands of the parent, some expense or outlay that otherwise would not have been made necessary. Medical services, and all necessary expenses of the care and treatment of a child whose injury or sickness is caused by the negligent or wrongful act of another, are elements of damages arising from such negligence. It is not necessary that the parent engage a stranger to administer medical treatment to the child, if the parent himself is a physician competent to perform such medical services. If he performs such services he is entitled to recover from the wrongdoer a reasonable compensation therefor, for such wrongdoer has made it necessary because of his wrongful act. But the recovery by the parent should not exceed the value of the services performed. He cannot recover for the loss of patronage as a practicing physician while detained at home on account of the sickness of either his wife or child. Such damages are too remote. Nor is the anxiety and mental anguish suffered by him and his wife, or either of them, by reason of the child's sickness, proper elements of damages.—Exchange.

AN INTERESTING DECISION.

In a decision rendered recently by Judge Philip Stein, of the Superior Court at Chicago, in the suit brought by Mrs. Sarah Ihrig to prevent the Mutual Life Insurance Company of New York city from forfeiting a policy for $2,000, taken out in the name of her husband, without giving notice, Judge Stein held that the company must abide by the New York law notwithstanding the decision of the Federal Supreme Court to the contrary, which had decided in the Cohen case that New York insurance companies can forfeit policies written outside the State without giving notice, while the New York statute provides that notice must be given of the voiding of policies. The Ihrig policy was written in Colorado.

QUEER VERDICT IN THE BALL PARK DISASTER.

The Coroner's jury which investigated the recent disaster at the Philadelphia ball park by which twelve people lost their lives, found that the accident was due to the rotten condition of the supporting timbers of the stand. They recommend an increased number of building inspectors and that the inspectors be given more power. The queer part of the verdict was that the Philadelphia Base Ball Club, the former owners, was found responsible in not having made a thorough investigation of the timbers in the stand during its ownership and in stating at the time of transfer that the buildings on the ground were in first-class condition The verdict against a corporation that has passed out of existence is considered remarkable.—Medical News.

WHAT IS AN ACCIDENT?

Notwithstanding his twenty-two years of service on the bench, Lord Justice Mathew still preserves (says the Westminster Gazette) that elasticity of spirit and love of a joke which has distinguished him through all his career. One of his remarks last week created great merriment in the Court of Appeal. A learned King's counsel was arguing the question as to what is an "accident," and was putting instances of what he considered would probably come within that term, and what, on the other hand, would not. "Suppose," said he "some one were to hit me in the eye and my eye became black in consequence, the fact of it becoming black could not be called an accident." "Perhaps not," said the Lord Justice, "but you would doubtless explain it on that ground."

RECENT DECISION IN REGARD TO INSANE CRIMINALS.

An important decision has been handed down by Justice Lambert, of the Supreme Court, Brooklyn, in relation to the incarceration of the criminally insane. The case was on the application of Alexander Gray for his discharge from the Matteawan asylum. The writ to test the constitutionality of the statute, which provides, that when the defendant charged with a crime is acquitted by a jury on the ground of insanity the trial court may if it deem is best for public safety and peace commit the acquitted defendant to the State asylum until he is discharged as cured. Gray was tried in the Court of General Sessions in New York county for assault in 1901 and acquitted by that jury on the ground of insanity and sent to Matteawan. Counsel for Gray claimed that the Court of General Sessions had no authority to pass upon the question of Gray's alleged insanity, and that exclusive jurisdiction in such cases rested in the Supreme Court. Justice Lambert says: "The writ so far as raised presents the questions: First, that the Supreme Court has exclusive jurisdiction of insane criminals. The commitment is authority for the detention of the relator only during the period of his insanity. If he has recovered he is entitled to a discharge."

CHRISTIAN SCIENCE NOT FOR ANIMALS.

The Texas District Court at McKinney has decided against Christian Science as the proper treatment for animals. The case came from the county court in a suit brought by a farmer of Collins county against the Houston and Texas Central Railroad for so injuring his horses with a train that they died. The testimony was straight, and it seemed that the plaintiff would win his contention without doubt. He went on the stand in his own behalf, and what he said in answer to questions strengthened his case until the attorney for the railroad asked him what treatment he had given the horses. He answered that he had given them the Christian Science treatment only. He had prayed for them, but had put nothing on their wounds and had done nothing to relieve them. The jury returned a verdict for the railroad company.—Exchange.

Medico-Legal Bulletin.

PUBLISHED MONTHLY BY THE
PHYSICIANS DEFENSE COMPANY
Fort Wayne, Indiana

VOL. I | SEPTEMBER 1903 | No. 12

THE MEDICO-LEGAL BULLETIN is issued on the first of each month, in the interests of the medical profession from a Medico-Legal standpoint, and will spare no endeavor to furnish valuable news and information relative to legislative enactments and judicial decisions affecting the profession. Communications on these subjects are solicited from all interested. Reprints of contributed original articles will be furnished, without charge, to authors making request.

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MEDICAL ADVERTISEMENTS.

While the medical profession as a whole is not pecuniarily interested in the suppression of quackery and quack advertising, yet it notes with appreciation the efforts being made by certain publishers toward the weeding out of medical advertisers. Mahin's Magazine for August, a journal devoted exclusively to advertising interests, has the following to say relative to the discontinuance of many old time medical advertisements: "Things in general are not going blithely with the medical advertisers. The old-timers are quitting the stage. The spring medicines have lost their spring. The Sarsaparilla Brothers come on for an occasional stunt just to test the temper of the public, but they scarcely get a hand. Few of the old favorites are left. Many of the medical houses are going in for dentifrice and toilet articles—a business now in its infancy, but with a wonderful future in advertising. If you doubt it consider the modern woman's dressing table—the hundred articles of luxury and necessity. Look at your own chiffonier or shaving stand.

As for the proprietary medicines, little is seen of Paine's Celery Compound, so much in evidence a year or two ago. Dr.

Green's advertising is spasmodic, and some recent changes in copy show a tendency to feel the way. Dr. Stewart, of the dyspepsia tablet and catarrh cure, is not aggressive. A somewhat sensational campaign is attempted for Cranitonic and Ozomulsion Company—both placed by the same agency and apparently using everything available in the way of media. They share full-page displays in the color sections of the newspapers and weeklies—results problematical, cost considered. The Cuticura Remedies are a puzzle, the proverbial exception that proves the advertising rule. They are said to have no "follow-up" and no salesman. The druggist desiring a supply must write to the company. The proprietors at one time divided a yearly profit of nearly $400,000. They are still doing well, but will doubtless be satisfied with less this year.

I have heard a score of reasons for the decline of the patent medicines. Here are a few of them: The prosperity of the country; people can afford a doctor. Less illness in good times. The advance of education and intelligence. The growth of Christian Science, together with its influence outside the faith. "A better understanding of the nature of patent preparations," say the doctors, "alcohol and harmful stimulants in the tonics, cocaine in the catarrhal powders, ether in the liniments, danger to the heart in the headache powders, opium in the cough syrups." Is it any wonder we are growing a bit nervous—those of us who are left?

Since the first of the present year there has been a wholesale awakening among the publishers of the daily press as well as the magazines, as to the undesirability of the so-called medical and proprietary advertisements. Many of the better class publications are excluding this class of advertising entirely. Everybody's Magazine for June announced: "We shall exercise a scrupulous censorship over all the advertising published. Various lines of patent medicine and other curative and objectionable advertisements will be declined even when offered by well known and reliable firms." Mr. Brady, of McClures, recently stated his intention to eliminate all questionable advertising from the pages of that magazine. The New Metropolitan has determined to reject all "Mail Order Medicals" and in instructions to advertising agents has stated that no medical advertisements will be published unless it is plainly stated that the remedy is for sale by druggists. The publishers of the Century Magazine are maintaining a high standard in the advertising department. The Curtis Publishing Company will not sell space to medical advertisers. The Vickery & Hill publications are declining unclean and unreliable advertising. In a circular recently

sent out by them, they enumerated thirty-eight objectionable classes of advertising which will not be accepted and close by saying "any advertisement to which any possible question can be raised or which contains objectionable illustrations." Among the religious publications we find that the Methodists are declining to accept medical advertisements. The advertising manager, A. E. Dunn, has issued a "cut out" folder in the form of a bottle, the front cover containing the words No Medicines for Methodists.

Through the efforts of the Buffalo Review, the people of that city are indebted for the arrest and conviction, of the audacious swindler, "Antonius, the Boy Wonder," for conspiracy to defraud. The judge in passing sentence, said, "I cannot be lenient in this case. The law does not permit people like yourself to impose upon persons whose horizon in life has been narrow and circumscribed, and who are most easily imposed upon. It it necessary in the interests of justice that I should impose imprisonment and the sentence of the court is that you be confined in the Erie County Penitentiary for the period of nine months." The Medical World of Huron, South Dakota, under its manager and editor, W. E. Holbein, has the courage to exclude all advertisements of patent medicines and medical fakers.

Physical Culture in a recent issue has taken up and made a complete and authentic expose of the Dr. Koch's Sanitariums and Lung Cure Institutes which have been operating in New York City, Chicago, Boston, Philadelphia, Cincinnati, Washington and St. Louis, for some time past. It has been the policy of this institution to run an ad in the newspapers containing the reproduction of what purported to be pictures of the celebrated Dr. Robert Koch and Edward Koch. It is needless to say that Dr. Robert Koch had no connection in any manner with these institutes.

Any effort along these lines should and undoubtedly will receive the hearty support and co-operation of the medical profession. If the time ever arrives that the fakers are denied the publicity and notoriety given through the public press, then quackery will have received a blow that will be the beginning of its downfall.

MORE CONCERNING CASUALTY COMPANIES.

In our issues of November and December, 1901, we called attention to the methods pursued by certain Casualty companies in their dealings with medical men, and we showed how fre-

quently physicians doing work for such companies are swindled out of their fees. Some months ago Dr. George Head, of Minneapolis, brought suit against one of these companies and succeeded in collecting his fee, and quite recently Dr. W. D. Kelly, of St. Paul, won a similar suit. We congratulated both of these gentlemen and feel that they have conferred a great favor upon the medical profession in having stood up for their rights, and we believe that such swindling will be less frequent in the future. The facts in the case of Dr. Kelly against the Maryland Casualty company were as follows:

C. D. Kennedy, proprietor of the Cascade laundry, had a policy in the defendant company indemnifying him against loss for damages in cases of injury. Mary Thiel, an employe, was hurt in the laundry one day and Mr. Kennedy called Dr. Kelly in to attend her. The physician amputated her arm. She sued Kennedy and got a verdict for $5,000, which the company made good to Kennedy. The company refused to pay the doctor's bill. The case came up before Judge Hine, who decided that "Kennedy, by the provisions of the policy, was defendant's agent in employing plaintiff and plaintiff is entitled to recover $150." The Supreme court approves Judge Hine's ruling. Justice Lewis says in the syllabus:

"An accident insurance policy provided; That the assured shall not settle any claim, except at his own cost, nor incur any expense, nor interfere in any negotiations for settlement or in any legal proceeding without the consent of the company previously given in writing, but he may provide at the time of the accident such immediate surgical relief as is imperative. The assured, when requested by the company, shall aid in securing information and evidence and in effecting settlements, and, in case the company calls for the attendance of any employe or employes as witnesses at inquests and in suits, the assured will secure his or her loss of time; that no action shall lie against the company as respects any loss under this policy unless it shall be brought by the assured himself to reimburse him for loss actually sustained and paid by him in satisfaction of a judgment after trial of the issue: that the policy shall only cover losses sustained by and liability for any claims against the assured as a result of the risk specified in the contract or contracts hereto attached.

"Held, the insured was constituted the agent of the insurer for the purpose of calling medical attendance in case of emergency, and the liability incurred was independent of the obligations otherwise provided in the policy."—St. Paul Medical Journal.

NO PATENT MEDICINES AT ST. LOUIS FAIR.

J. A. Ockerson, chief of the liberal arts department of the St. Louis exposition, says: "Articles that are in any way dangerous or offensive: also patent medicines, nostrums and empirical preparations whose ingredients are concealed, will not be admitted to the exposition. The director of exhibits, with the approval of the president, has the authority to order the removal of any article he may consider dangerous, detrimental to or incompatible with the object or decorum of the exposition or the comfort and safety of the public."—Practical Druggist.

DOCTOR ARRESTED FOR FRAUD.

Dr. Paul Newton, claiming to be a professor in Belleview Hospital, Chicago, was arrested at Benton Harbor, Mich., on the charge of fleecing W. Howard, a Sodus farmer, out of $200.

Newton claimed to be a specialist for the treatment of asthma, and is said to have made a contract to cure Mrs. Howard for $200. A note was signed by Howard, but Newton was not to cash it until the woman was cured.

Mrs. Howard grew rapidly worse instead of better, and when Howard sought Newton he could not be found, but the money had been drawn from bank.

The matter was placed in the hands of Sheriff Collins, and Newton was arrested as he drove into the livery barn. He was given a hearing before Justice Hammond and being unable to furnish bail was sent to jail. Other cases of a like nature have been reported to the police against the doctor.

The name of Dr. Paul Newton does not appear in the Chicago city directory, and there is no Belleview medical college in Chicago.

ALLEGED MALPRACTICE.

John Orb, of Huntington, Indiana, has brought suit against the Wabash Railway Co. for permanent injuries received in an accident just west of that city some time ago when his speeder was struck by a train. He also charges the surgeons at the Wabash Railway Hospital at Peru with malpractice in the treatment of his injuries. The plaintiff's attorneys are Lesh & Lesh and the amount demanded is $10,000.

Orb was examined by a number of physicians for the purpose of obtaining evidence to be used at the trial.—Exchange.

GIRL WHO LOSES SUITORS BECAUSE OF ACCIDENT SUES FOR $10,000.

Because she was unable to get married, despite the fact that before last April she had dozens of admirers and suitors, Rosa Adams, aged 20, has begun suit against the St. Joseph's Hospital Society, St. Paul, Minnesota, for $10,000 damages. She alleges that by reason of a fall in an elevator shaft at the hospital she has lost the use of one arm, has the other arm crippled, and now is so deformed that she "is ineligible for a proper marriage" and that her suitors have forsaken her.

SUES HOSPITAL FOR LOSS OF HAND.

The West Side Hospital, 819 West Harrison street, Chicago, Ill, is defendant in a suit for $25,000 damages filed by Arthur H. Roberts, 257 Indiana street. He alleges that antiseptic precautions were neglected in the dressing of a bullet wound in his left hand and that as a consequence blood poisoning set in and amputation made necessary. The hospital officials say Roberts was never treated at the institution.

DENTISTS IN DANGER.

A somewhat remarkable damage suit was filed at Des Moines, Iowa, in which is a hint of a new danger for dentists. The suit was for damages because a dentist is alleged to have caused consumption in a patient, from which the said patient died. Theodore Frace sues Dr. J. R. Ryan for $5,000 damages, alleging that Dr. Ryan administered an anaesthetic to Frace's wife while engaged in pulling a tooth and that by and through the application of this medicine she contracted tuberculosis from which she afterward died. Just how the connection between the two is to be proved to the satisfaction of a jury remains to be brought out on the trial of the case, but the point is a novel one and may lead to a long chain of similar lawsuits.—Exchange.

State Medicine.

Under this head will be published articles relative to the application of medical knowledge to the public welfare. It includes forensic medicine, public hygiene, medical ethics, medical education and military and naval medicine.

Communications, articles and reports from members of state boards of health and boards of registration and examination are requested.

AN IOWA VACCINATION RULING.

In a suit in the District court of Lucas county, praying for a writ of mandamus to compel the school board of a certain township to admit the unvaccinated children of a family to the public school, a demurrer was filed and argued by the defendant school board. After a copious citation of authorities the following is the conclusion of the opinion of Judge Vermilion, overruling the demurrer and granting the writ prayed for:

"The authorities, almost without exception, recognize that to give validity to such a regulation of a board of health there must be (1) either a statute to the same effect which the board is called upon to enforce, or (2) express statutory authority to make the regulation, or (3) an emergency justifying the enactment and enforcement of the rule under general powers.

Perhaps the strongest announcement of the last proposition is found in Indiana, but in the Blue case, cited, the court carefully guards against announcing a doctrine that might be construed to authorize a permanent exclusion from school of an unvaccinated child.

The rule or order could not be considered as having any force or effect beyond the existence of that emergency, and Kleo Blue, by virtue of its operation, could only be excluded from school upon his refusal to be vaccinated until after the epidemic of smallpox had disappeared.

If the pupil cannot be excluded after the danger of an epidemic is past, he cannot, in reason, be excluded before such danger arises.

The holdings of the Illinois and Wisconsin courts are directly in point, being based not only upon similar facts, but upon statutes identical in spirit and meaning, if not, indeed, in language, and are not only well supported by authority, but have been in turn recognized in subsequent discussions of the subject as announcing correct principles of law. It would require very considerable weight of authority to the contrary to justify a holding against rules of law so announced, and to my mind such contrary authority is entirely lacking.

Attention is called to an opinion of Attorney General Remley, which is said to sustain the position of defendant. The learned attorney general skillfully avoids the rock that proves the stumbling block in this case. He is speaking of "the power of a state to require all persons to be vaccinated when danger threatens," and he is "thoroughly convinced that every reasonable order made by boards of health will be upheld by the courts, even to the extent of requiring all persons not immune in a community threatened with the dread scourge to be vaccinated. The reasonableness of any order depends, of course, upon the necessity for it, the proximity of danger."

Those are just the propositions upon which stress is laid by all the authorities. For the reasons then, (1) that the State Board of Health had no power to require vaccination as a condition of admission to the public school, in the absence of an emergency, such as a threatened invasion of the community by smallpox, and (2) that the regulation relied on is, under the facts pleaded in these cases, unreasonable, the demurrer will be overruled.

In so holding, however, it is not intended to say that the rules and regulations of the State Board of Health in respect to vaccination are not valid and enforceable in an emergency such as calls for their exercise, but only that under the facts pleaded in these cases, no such emergency existed.

The rules in question, considered as general regulations of universal application throughout the state, without regard to the existence of an emergency requiring such measures, are in the nature of general laws imposing a permanent and unyielding condition upon the enjoyment of public school privileges, and a restriction upon the personal liberty of all citizens, which are beyond the power of the board of health to enact. But considered as applicable only in an emergency requiring prompt and effective administrative action to check an existing epidemic or

avoid a threatened one, and as having no application to pupils or citizens not affected by such conditions, and as having no force either before the occasion for their operation arises or after it subsides, they are valid regulations.

In the one case they would be considered an exercise of legislative power which the board of health does not possess, and in the other as an administrative process within its power as defined by statute. This distinction is recognized by practically all the authorities referred to and many others.

The Legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.

Locke's Appeal, 72 Pa. 491, 13 Am. Rep., 716; Blue vs. Beach, supra; Hurst vs. Warner, 102 Mich., 238, 26 L. R. A., 484-491.

The true test and distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution to be exercised under and in pursuance of the law. The first cannot be done. To the latter no valid objection can be made.

Ry. Co. vs. County Com'rs., 10 St. 88; State vs. Burdge, supra; Blue vs. Beach, supra.

It is a principle not questioned that, except when authorized by the constitution, as in respect to municipalities, the Legislature cannot delegate legislative power, cannot confer on any body or person the power to determine what shall be the law. The Legislature alone must determine what it shall be.

State vs. Young, 29 Minn., 476; Potts vs. Breen, supra.

The clerk will in each of these cases enter an order overruling defendants' demurrer to the petition, noting defendants' exception and giving defendant till the first day of the next term to plead. C. W. Vermilion, Judge."—(Iowa Health Bulletin.)

IN THE TOILS.

"Dr." H. G. Wright, Cloverdale, California, was fined $100 for practicing medicine without a license in that town.——Ma Too Ting, of Stockton, twice tried for practicing medicine without a license and on whose case two juries have disagreed, has been discharged.——"Dr." Myers, an optician of Hanford, found guilty of impersonating an agent of the State Board of Health and sentenced to 100 days in jail and a fine of $100, has been surrendered by his bondsmen, and is in jail in Fresno.—J. A. M. A.

PENNSYLVANIA PRACTITIONERS ARE BARRED FROM PRACTICE IN NEW JERSEY.

Pennsylvania physicians are debarred from practicing in New Jersey unless they undergo an examination before the Medical Board of that State. This measure is in retaliation for the action of the Medical Examining Board of Pennsylvania, which refuses to endorse the certificates of the New Jersey physicians without an examination.

Dr. C. D. Moulton, resident physician of the Cooper Hospital, Camden, is the first physician to feel the operation of the new conditions. The New Jersey Medical Board refuses to recognize his certificate issued in Pennsylvania unless he submits to an examination in New Jersey. This he will probably do.

Residents of New Jersey desiring the services of Pennsylvania physicians not licensed in New Jersey will be obliged to employ a New Jersey physician, who may then call Pennsylvanians as consulting physicians.

Similar action was recently taken by the New Jersey Supreme Court against the New York lawyers, who were debarred from practicing before that tribunal because the Supreme Court of New York refused to recognize New Jersey lawyers.

INDIANA STATE BOARD.

The State Board of Medical Registration adjourned today and announced that the next session would be held September 18, when there will be preliminary examinations of students who desire to matriculate in the medical colleges of the State. Dr. James M. Dinnen, of Fort Wayne, a member of the board, said that a vigorous fight would be waged against the class of practitioners that disregards the law requiring the taking out of licenses. Up to the present twenty-seven names have been sent to the board, but there are doubtless many others, Dr. Dinnen said, who have no licenses and who in all probability would not be able to procure them if they submitted to an examination.

In one county a former physician, now a manufacturer of electrical appliances supposed to cure disease, has been indicted by the grand jury for practicing medicine without a license. The fact that he does not deal out drugs to heal the sick makes the case a peculiar one, and it is being watched by the State Medical Board. In returning an indictment against this man it was held that the sale of appliances of any sort that purport to benefit the sick constitutes the practice of medicine in the general acceptance of the term.

SWINDLING ILLEGAL PRACTITIONERS.

According to the detective department of the city of Philadelphia a number of swindlers have conspired to blackmail medical practitioners who do an illegal business. It is stated that three persons call together on their victims, show them warrants and if they do not put up good sums of money they tell them they are under arrest. It is needless to say that the money is forthcoming and "arrest" is escaped. It is "Greek meet Greek" when knaves and swindlers prey upon each other.

ALBA DENTIST COMPANY MUST EXPLAIN.

Action has been brought against the Alba Dentist Company, which has a number of dental parlors in Philadelphia, for its violation of the law and its own implied contracts in employing student dentists to do certain of the professional work in its dental parlors. Also the company must explain why it is not exercising any of the objects authorized by its charter, and is not engaged in manufacturing or supplying any surgical instruments or supplies or appliances, such as it uses in the business conducted by itself, but on the other hand is doing the customary work of the professional dentists, which appears to be contrary to its charter.—Amer. Medicine.

MEDICAL PRACTICE AT HOT SPRINGS.

The Secretary of the Interior has issued some new rules with regard to procedure at Hot Springs, Ark., their object being to regulate the actions of a number of individuals who make a pretense of practicing medicine at the springs, without being qualified as practitioners. The new rules require that all physicians prescribing the water from the hot springs shall be regis tered; a board of physicians has been appointed to pass upon the qualifications of applicants for licenses. A large number of "quacks" have made their way to the Springs recently, and their presence has been the cause of many complaints to the Department of the Interior. The board appointed consists of Lt.-Col. Blair D. Taylor, U. S. A., in charge of the Army and Navy hospital at Hot Springs; Dr. G. C. Greenway and Dr. C. Travis Brennen.—Detroit Medical Journal.

PHILADELPHIA QUACKS.

Two professional casters-out of demons have engaged in an illuminating argument at Philadelphia. One is a native of the place, while the other is a "reformed physician from Chicago." It is a pity they do not agree, because to the unlearned mind their theories and methods seem to be about the same. The "divine healer" from the west has received a good deal of notoriety by summoning the lame, the halst, and the blind to his platform, and then, after formally exorcising the demons which caused these infirmities, pronouncing the patients cured, and hustling them out of sight so quickly that no one could examine just what had been accomplished. According to the claim of his followers, he cast out about 1,000 demons during business hours of one day. This was all very well, but the local "divine healer," who presumably felt the competition, sent out an open letter. "Why don't you heal yourself?' Take off your spectacles, if you can cure other people's eyes." The "reformed physician's" reply is adequate, though it smacks slightly of sophistry. "I am an old man," he said, "and the balls of my eyes have grown flat. But younger persons, under the age of 50, who wear spectacles, are possessed of demons and if they had proper faith, the demons would jump out of them." This means, apparently, that if one's eyeball gets flattened at the age of 45, it is the work of a demon, but after five years of occupancy the demon can vacate the premises and the eye still remains flat. But if this is true of eyesight, it is true of everything else. Consider the little demon which causes indigestion. Granted that the good and wise man from Chicago can cast him out, does there come a time when the "host," as biologists say, is equally uncomfortable with or without the demon? There is no escape from the dilemma. Either demons cause measles or they do not. If they do, though the patient be 97 years old, the measles go away when the demons do. If not, we must go on believing that the germs are the really important performers, and the demons only incidental. —New York Evening Post.

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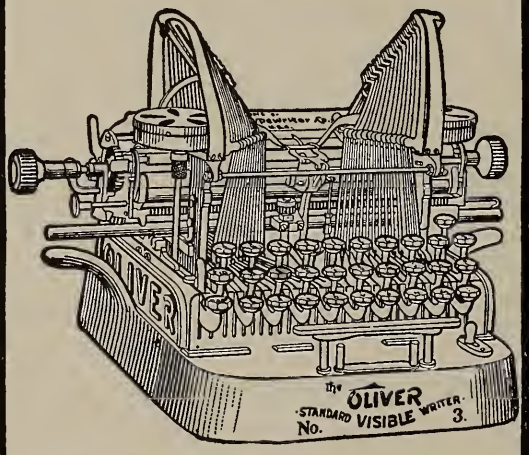

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WM. A. BOHN, Treasurer National Telephone Company.
EDWARD J. McOSCAR, M. D.
C. H. WORDEN, Vice President First National Bank.
E. W. COOK, Secretary Citizens Trust Company.
O. N. HEATON, Judge Superior Court.
GEORGE J. COOK, M. D., Secretary Medical College of Indiana, Indianapolis.
E. H. MERRITT, Secretary.

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